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JOURNAL of the MISSISSIPPI STATE BAR

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THIRTY-FOURTH ANNUAL MEETING

OF THE

MISSISSIPPI STATE BAR

HELD AT

BILOXI, MISSISSIPPI, JUNE 22, 23, 24, 1939

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R. M. KELLY

Retiring President State Bar Association

Mississippi Law Journal

JOURNAL of the MISSISSIPPI STATE BAR

VOL. XI AUGUST, 1939 No. 5

STATEMENT OF THE NEW PRESIDENT OF THE STATE BAR

To the Members of the Mississippi State Bar:

I desire to state that the greatest honor which has ever come to me, as a lawyer, was my election as President of the Mississippi State Bar. Words are inadequate to express my high appreciation of this honor.

Lawrence Tibbett, opera singer, states that never before in the history of this country have its people been so jealous of their liberty, democracy and constitutional rights.

During the past two years we have witnesed changes in constitutional construction amounting to almost judicial revolution. These changes, however, had to do with economic conditions and social reform, evidencing a higher sense of social obligation on the part of the American people.

It is gratifying to state that nothing has happened to impair the right between citizen and citizen to resort to the courts for vindication of their private rights, and the constitutional guarantees of liberty and justice, which our forefathers deemed so essential to life, liberty and the pursuit of happiness, remain unimpaired.

I call your attention to a summary of the address of Mr. Frank J. Hogan, President of the American Bar Association, delivered at San Francisco, where he forcibly directed the attention of the Bar to shifts in constitutional decisions, summarizing his remarks in the following language:

> "For more than five generations the people of America have looked with unshaken and unshakable confidence upon American Courts as temples of justice. Happily it may be said that nothing has occurred to diminish that confidence in litigation between citizen and citizen, or in those cases which involve individual liberty intended to be protected by the specific and sacred guarantees of the Bill of Rights. The administration of justice according to law in controversies between man and man goes forward as steadily today as at any time in the history of courts. Our Federal and State judiciary still vigilantly

uphold freedom of speech, press, and worship; the right of peaceable assembly; the right to have one's home treated as his castle; the right to be free from unreasonable searches and seizures; the right to trial by jury when life, liberty or property is involved, to be represented by counsel, to have personal liberty guarded in those vital respects that are so dear to a society of freeborn men. This indeed is reassuring".

I was also greatly interested in the remarks of Mr. R. L. Maitland, a distinguished Canadian lawyer, in his address at the annual banquet of the American Bar Association, forcibly calling attention to the fact that the ordinary man in the street looks to the Bar to protect him in the enjoyment of democratic liberty and constitutional government. He used the following language:

"What we want is this: To maintain the best of the very best that is in that old order, and remember that in those many days gone by those men who struggled with the common law, those lawyers, were the people who gave the man on the street the most precious things that that man on the street has. Did you ever realize the things that law has given to the ordinary citizen? The sanctity of the home, the liberty of the subject, the protection of the widow, the security of business, the enforcement of contracts, the guarantee of future rights, protection against fraud, protection against deceit, standing by the weak, standing by everybody along that solemn course, the course that your forefathers gave you in the Constitution, the establishment of justice, the establishment of intellectual, spiritual and physical liberty. Let those things be put in danger and you lose everything.

"If a man knows that this liberty is guaranteed to him, that he has a right to take that knowledge and that brain that God gave him, that he has a right to make the things that he is able to make, to say the things that he wants to say, to write the things that he wants to create, then he goes through life a man who is making and building and adding progress to his community and his country".

The occasion constitutes a challenge to us, as members of the Bar, to be and remain, as they have always been in the history of our government, defenders of human liberty and advocates of constitutional democracy. I am sure that we will cooperate one with another during the coming year for the advancement of the interests of the Bar.

Sincerely,

W. H. WATKINS, President,
Mississippi State Bar.

Proceedings

of the

THIRTY-FOURTH ANNUAL MEETING OF THE

Mississippi State Bar

HELD AT

Biloxi, Mississippi

June 22-24, 1939

PROCEEDINGS OF THE THIRTY-FOURTH ANNUAL MEETING OF THE

Mississippi State Bar

Held in the City of Biloxi, Mississippi, on the 22nd and 23rd of June, 1939

THE PRESIDENT (Hon. R. M. KELLY)—in the chair—Gentlemen, the State Bar of Mississippi, will now come to order.

Is Reverend Father Leach in the audience?

Judge Sydney Smith, I will ask you to invoke divine blessing.

JUDGE SYDNEY SMITH: Our Father, we come to Thee this morning and thank Thee for permitting us to gather here in this assembly. We ask Thee to let Thy spirit brood over us, enter into and combine with our spirits and direct every thought, every deed and every word while we are in session. May our minds be addressed to the work that we have come to undertake. May we undertake it in a spirit of loyalty to Thee and of love in our hearts for our state, and with a desire to elevate this great profession—one of the state's principal organs for social advancement, so that everything that we may do may be for that purpose and that alone. All of which we ask in the Master's Name, Amen.

THE CHAIR: I now have the pleasure of introducing a gentleman whom all of the members on the coast well know, and before the close of the meeting I am sure the members of the bar to him will be well known.

The mayor of the city is absent, and in his stead it is my great pleasure to present to you Hon. L. H. Doty who will address you.

HON. L. H. DOTY: Mr. President, Members of the Supreme Court, Chancellors and Judges and the Mississippi Bar: Speaking on behalf of the Mayor of the city and the Commissioners, as well as each and every citizen, we welcome you to the city of Biloxi and extend to you all of the courtesies which you so justly deserve. This is a great place for relaxation; it is a great city for pleasure; it is filled with many things of interest which we invite you to see before you return to your homes.

This is one city in Mississippi that has been under seven flags since the day it was founded, and we are now under a flag which I hope we will remain under for the balance of time, the symbol of educational, political and religious tolerance, and may we all live as Americans and die as Americans.

We ask you to lay aside all things after the business sessions are over and devote yourselves to pleasure, such as can be found in all parts of the city. We welcome you gentlemen to the city of Biloxi. (Applause)

THE CHAIR: Thank you, Mr. Doty.

I think the majority of the members of the bar have already availed themselves of your suggestion, judging especially from the tardiness with which they are arriving this morning.

There is no better city, there is no greater city, there is no city in which people really can enjoy themselves better than they can in Biloxi or the coast.

It is now my pleasure to introduce—I did not know they had a district attorney in Biloxi until this morning and they told me that the district attorney was going to welcome us—I take great pleasure in presenting District Attorney Cowan, who will welcome you on the part of the Bar.

HON. R. C. COWAN: Mr. President, Members of the State Bar, Ladies and Gentlemen: It might be true that there is no district attorney down in Biloxi. There will not be any during the meeting of the State Bar.

It is my pleasure to welcome you on behalf of the lawyers of the gulf coast of the State of Mississippi, those lawyers who inhabit and have their professional being in that little narrow strip of territory that is bounded on the east by Alabama, on the west by Louisiana, on the south by the waters of the Mississippi Sound of the Gulf of Mexico, and on the north by the other part of the state of Mississippi.

We all know that no bar association could proceed to business without an official welcome; for such has been the custom from the time that the memory of man runneth not to the contrary, and surely no body of lawyers—sometimes not even judges—would abandon a precedent for something more modern, sensible or useful.

My friends, you have been officially welcomed by the representative of the mayor of the city of Biloxi, the gentleman known as Colonel Doty, one of the leaders of our Bar. There can be no doubt as to the genuineness of that welcome. Biloxi is a great city. It has grown greatly since D'Iberville in the name of France first planted the French flag on the shores of Biloxi bay in 1699, and established the first white settlement in what is now the United States. It is now a modern and progressive city, but still rich historically in legend and romance. I am glad that in that official welcome you were extended all the hospitality that has developed under those seven flags that have flown over this domain, but I say to you in confidence, and for your great pleasure and greater delight, that before you shall have left these shores, it will be arranged for you to be entertained by the dance of the seven veils.

My friends, there are many things—I am not going to take much of your time, because I happened to notice how eager you were to get over here to hear these two addresses of welcome (laughter)—you must have seen them on the program. I knew that your minds were on them when I saw you in the hotel lobby. Of course, you said something about where the next meeting is going to be and who would be the next president, but I know your minds were on hearing my good friend Colonel Doty or John Culkin.

But all along the Mississippi Gulf Coast from Pascagoula on the east to Bay St. Louis on the west, you will find many things of interest. A concrete seawall extending along the shores of the Mississippi Sound a distance of forty miles, which was built at a cost of $3,400,000, built to protect one of the most beautiful scenic driveways in the world; yacht harbors, alive with boats of all kinds, club houses and commercial harbors worth millions of dollars. A few feet from where you now sit is the historic light house, which was painted black when Abraham Lincoln, then president of the United States, was assassinated; and only a few miles west of you still stands the beautiful home of Jefferson Davis, the president of the Confederate states; and the little office in which he spent his last days writing "The Rise and Fall of the Confederacy", bids you welcome. A short distance to the east you will find the church where he worshipped, and tomorrow, perhaps today, when you take your trip across the alluring waters of the Mississippi Sound to Ship Island, you will see that fortification, which was planned and partially constructed by Jefferson Davis during the time when he was Secretary of War in 1856.

Only a few miles to the west you will find the old mansion and the underground passage where Jean LaFitte held rendezvous with his co-pirates.

The waters on the south are filled with the greatest variety of game, salt water fish, and only a few miles north, running east and west from one end to the other of these three counties, are hundreds of miles of rivers, bayous and lakes fully stocked with the best fresh-water fish in the world, and for your pleasure you will find steamboats, motor-boats, palatial yachts and even sail boats awaiting your command. But more alluring and more attractive than all these are the hundreds of bathing beauties that infest our shores.

With other good things we have our quota of lawyers on the Mississippi gulf coast. They feel honored by your presence and bid you welcome. It has been said that lawyers work harder, live longer and die poorer than any other class of men. We of the coast do not belong to that class. It is true that few of us die young, but with the many blessings that nature has bestowed upon us our needs are few and most of us are just naturally opposed to working hard. They say that we have had too many lawyers in proportion to business since 1813, when this part of Mississippi first became

a part of the United States, and that we have been getting twice as many each year as we need to maintain the profession at its normal strength. Not long ago some fellow in Arkansas advocated that we should plow under about one-third of the crop each year, and I suggest that at this meeting of the bar association a suitable committee be appointed to decide who shall do the plowing, and how many are going to be plowed under each year.

The lawyers of the Mississippi gulf coast want to meet and mingle with the lawyers of the other parts of the state of Mississippi; we want to know you better, and we want you to know us. We want you to know more about this part of the state of Mississippi, and to know that our harbor and shipping facilities are among the valuable assets of the state. We want you to know more of the great possibilities of this section of the state. Government statistics show that Harrison county is the healthiest county in the United States, and that we have the best artesian drinking water in the world. The natural beauty of the scenery along our coastal line is admired by people from all parts of the world, and hundreds of people come from other states each year to enjoy the healing benefits of our balmy climate and soft air. Our churches, schools and colleges are equal to the best. Hundreds of boys and girls from other states attend our colleges each year. Our citizenship is alert and progressive.

Now, our friends, I know you are going to enjoy your stay down here, We are honored to have you, and on behalf of the lawyers of the gulf coast, with all that we are, with all that we have, and with all that we hope to be, we bid you welcome. (Applause)

THE CHAIR: Of the things Mr. Cowan forgot to mention while St. Augustine claims the fountain of youth, Ponce de Leon was really looking for Biloxi to designate it the fountain of youth.

MR. COWAN: There is no doubt about it.

THE CHAIR: With reference to the dance of the seven veils: is there any age limit as to the attendance?

MR. COWAN: There is as a rule, but may I tell you that a special dispensation has been accorded and there is no age limit during the next few days.

THE CHAIR: Another thing, in so far as the suggestion that they have forgotten about the coast, at least one member of the bar present has not forgotten and that member is a representative of the tax collector's office, Col. Sidney McLaurin.

MR. COWAN: I did not include that intentionally.

THE CHAIR: As to which of the lawyers should be plowed up, I would recommend that we plow up the good ones.

I am also glad that you advised me as to Mr. Doty's entitlement. It is now Colonel Doty.

To respond properly to these addresses of welcome, Senator Culkin, statesman Culkin, being chairman of the program committee, very properly and wisely designated himself as the proper person to respond to the addresses of welcome. Now anything that I don't tell you about Senator Culkin he will tell you himself.

It is now my pleasure to present Senator Culkin.

MR. PRESIDENT, MEMBERS OF THE MISSISSIPPI BAR, LADIES AND GENTLEMEN:

One year ago today, in Vicksburg, the imperial city of the richest valley in the world, there appeared an ambassador of good will, accompanied by an incense bearer from a temple of dreams and filled an assembly of lawyers with anticipated animation by requesting that we visit a land where the trees are just a little taller, the grass just a little greener, the men just a little more chivalrous and where femininity presented a continuing pageant of pulchritude, marching into mausoleums of delight.

In compliance with this injunctive exhortation, we, the membership of the Mississippi State Bar, are enjoying this daydream of delights in nature's paradise of enchantment, on your beautiful Gulf Coast.

Beginning with the soul inspiring invocation of your distinguished ecclesiastical dignitary, commingled with the graciously extended hospitality of Col. Doty of Biloxi and reinforced by the inspired eloquence of your chief law enforcement proponent, Hon. Cliff Cowan, we are assuming the physical and mental attitude of citizens of this far famed principality of happiness.

From the day when the Pascagoulas joined hands and marched into the placid waters of an enchanted stream, until last night when the dying echoes of the weird chant of this lost tribe dissipated its harmony, cadence and synchronizing music over the mystic river, in song and in story, in poetry and in prose, Biloxi has indeed been the happy hunting ground of the sons of men. Father Ryan and John Ruskin dedicated your shores with their presence and paeans of praise and today your hospitality reincarnates their inspired themes.

Since last we met in annual convention, momentous international changes, social reforms which contemplate a greater degree of security for the weak and fallen, and modernized developments in practice and procedure, all presenting elements that directly bear on the legal profession, have claimed the attention of those who anticipate keeping abreast of an ever changing world.

It is a pleasure and a delight to appear for and in behalf of the legal profession. It has been said that public office is a public trust, but we know that our profession is a sacred duty. No vocation offers so great a field for service and more far-reaching opportunities to destroy the rights of mankind. Ignorance, negligence and

failure to comply with the prerequisites of an intricate system of common-law jurisprudence and its unlimited applications to definite cases close the barrister's road to success and destroys the litigants' opportunities for just and equitable representation.

No other sphere of human existence offers so wide a scope for development as the life of a lawyer. Virtues and vices, strength and weakness, passion and prejudice, frankness and deception, even from temples of ecclesiastical solitude to dungeons of guilt, pass in never ending array and reincarnating panoramas before the ministers of judicial distribution.

Our profession does not place the laurel wreath of approval on the brow of superficial exponents of pretense and proponents of pious platitudes and those who endeavor to attain success by intrigue, deception and dishonesty. The index of character and the window of the soul, in a temple of justice, are determined by mental acumen and sagacity, united with unlimited comprehension of legal principles, facts and circumstances.

Notwithstanding the assaults of misguided charlatans and selfish representatives of certain political and industrial interests, the legal profession will ever remain as the beacon light which guides us to higher planes of civilization, culture and social and industrial security.

On the forum, in legislative halls, in the daily communion of fellowship, our profession must ever be the leader which will wipe the tear of anguish from the brow of suffering humanity, assist in restoring peace to the troubled breast and weaving crowns of immortality for the peoples of the earth.

Your cordial welcome, your unbounded hospitality and gracious fellowship will be long remembered and will linger like a halo in our soul of thought, "Even till the stars are old, and the sun grows cold, and the leaves of the judgment book unfold."

THE CHAIR: Senator Culkin's response being provided solely in prose, I am now going to call upon the poet laureate of the state Bar of Mississippi to express to you his response in poetry, Mr. Ellis.

MR. W. A. ELLIS: Mr. President, ladies and gentlemen, I thank the president very much for his kind introduction, I do not want to weary you people. I have enjoyed the observations made by the speakers up to date.

Sometimes the muses buzz around my head and I write a little poetry, and I will read you one or two of my little effusions. These are written in iambic and trochaic. With your permission I will read them, and I will try to read them loud enough so you can hear me.

MISSISSIPPI'S RIVIERA

1699-1939

O, Muses, whom the poets love
For rhyme and rhythm's flow,
Inspire the music in our soul
To draw her longest bow.

O, Riviera, on our coast,
We sing thy praise today,
Thy golden past, thy present worth
That shall increase for aye.

Thy cities, towns, and villages
Stretch far along the way
From modest little Waveland town
To Pascagoula's Bay.

What are the wild waves saying now
Down on thy glittering strand,
Where prices rise to meet the skies
Along thy shimmering sand?

We sing a song of victory,
To all the world proclaim
The grandeur and the glories of
Our Riviera's fame.

The seat of empire once was thine
When Louis held his sway
And sent Lemoyne of Iberville
To found Biloxi Bay.

The flag of seven nations, proud,
Have flown above thy wave,
The land of love and liberty,
Sweet freedom's home and brave.

The Riviera on thy coast
Runs many a stream-line mile
Where ev'ry prospect pleases us
And man and nature smile.

High on a beach of fine shade trees
Live oaks with moss o'ergrown,
The wind and breeze from southern seas,
Play tunes like Mendelssohn.

All isles within six leagues of shore
Break heavy waves in twain,
Protecting us from tempest's roar
And storms that sweep the main.

Thy Boulevard along the beach
To join the great sea-wall,
Is consummation to be wished,
Devoutest one of all.

Where seafood tastes like manna, when
The tide or boat comes in,
With gold in many a fish's mouth
To please seafaring men.

You sing and dance, you work and play
Throughout the live-long year,
And now it seems your fondest dreams
In real life appear.

Your mermaids and your merry maids,
King Solomon would stare—
So lovely and so beautiful,
Beyond all else compare.

In olden times the Spanish Trail
Led where the Spaniard won
Through woods and plains, the vast unknown,
Towards the setting sun.

Along thy gently curving strand,
Shade trees stand guard around,
A lovely land of happy dreams,
Sweet peace, enchanted ground.

Hotels, hospitals, churches, schools,
For body, soul and mind,
Stand ev'ry test among the best
For good of all mankind.

Thy marts of trade, fine parks and homes,
Broad bays, Sound, sea and shore,
Hold fast the wise, good, rich and poor,
Spellbound forevermore!

W. A. ELLIS
Carthage, Miss.

BEAUVOIR

Beauvoir, Miss., was the last home of Jefferson Davis, only President of the C. S. A. In this home, he wrote "The Rise and Fall of the Confederate States of America". He died in New Orleans in 1889 and sleeps in his old capital, Richmond, Virginia.

Beauvoir, the beautiful. Magnolias bloom
And shed among live oaks their sweet perfume.

Beauvoir, last home of Mississippi's sage,
The peer of this or any other age,

Whose history of long, lost, tragic years,
Recalls our loss of treasure, blood and tears.

Beauvoir, the sorrowful, whose live oaks spread
Their mossy limbs like weeping o'er the dead.

Memorial Home to one who most of all,
Bore grief and pain for country's Rise and Fall.

"All lost save honor." Let it still live on,
The brightest jewel of an age that's gone.

Beauvoir, Fine View, beside the sounding sea,
A Home, a Shrine for millions yet to be.

W. A. ELLIS
Carthage, Miss.

MISSISSIPPI'S RIVIERA
1699-1939

From the little town of Waveland,
Stretching East along the shore,
With its cities, towns and places,
Streaming forty miles or more,

Mississippi's Riviera
Braids our southern, sunny strand
Like some rich, embroidered garment
Touched by fairy's magic hand.

Bay Saint Louis to Biloxi,
High beach, live oaks moss o'er-grown,
Is the glory of the southland—
Mississippi's very own.

Bay Saint Louis, ancient, holy,
Famous as a college town,
Dotting Bay, the Sound and setting
Like a jewel in a crown.

Rises from the peaceful waters
Lovely city, Pass Christian,
Home of culture, wealth and beauty,
Fit abode for gods and man.

Gulfport's famous for her commerce,
Transportation, trade and piers,
Filling Captain Hardy's vision—
Seaport for a hundred years.

Foreign and domestic commerce,
Real value, solid worth,
Also was Captain Jones' ambition—
Trade with nations of the earth.

Beautiful Beauvoir is weeping
O'er her noble spirits flown,
But beyond their peaceful sleeping,
God keeps watch above His own.

Ocean Springs to "Singing River,"
Pascagoula's murmuring stream,
Mingling with the waves forever,
In that deathless song and dream.

We have heard of old Biloxi,
Oysters, seafood, Sound and Bay,
With its breezes from the ocean
Driving weariness away.

Like the queen of ancient Sheba
In the temple wrought with gold,
In the midst of grace and glory,
Said—"The half has not been told."

From the famous Crescent City,
Speeding east along the way,
You will find a garden city
In Biloxi on the Bay.

In the springtime or the winter,
Nature woos with many a smile,
As you journey on the Highway,
Stop to think or drink awhile.

Where the mermaids and the maidens
Entertain all passersby
With the poetry of motion
In their heels and charming eye.

If you want a great convention,
Real work with restful play,
Over all that you can mention,
Choose Biloxi on the Bay.

Where the porpoise like some lawyers
Blows the jelly fish away,
But the big boys know his spouting's
Just the same old roundelay.

Old Biloxi's ancient glory
With her modern upward trend,
Illustrates a wondrous story,
Fact and fiction's super-blend.

Like some rare and radiant flower,
Evergreen along the shore,
Still unfolding ev'ry hour,
Beautiful forevermore.

Old Biloxi, lucky city,
Seat of empire in her day,
Gleams and glows with golden glory
That shall never pass away.

Buena Vista, Old Biloxi,
Sound the tocsin, draw the bow,
Health and happiness forever,
As the tides shall come and go!

W. A. ELLIS
Carthage, Miss.

(Applause)

THE CHAIR: Poetry vs. Prose.

I am at least going to suggest that the Governing Board of the Law Journal consider and publish the poems written and read by Mr. Ellis. (Applause)

Every cloud should have a silver lining. The chairman of the program committee allocated to himself 40 minutes for his response to the welcome addresses, and he has allotted me fifteen.

With due consideration for the members of the Bar, but following precedent—and I would not do otherwise—the President is required to read his remarks.

Members of the Mississippi State Bar, Distinguished Visitors, Ladies and Gentlemen:

Fully appreciating the honor—the great honor—of being chosen President of the Mississippi State Bar, it was my ambition at the outset to exert every effort to accomplish something that might be of practical help or benefit to the members of this Bar. If by reason of any changes that could be wrought in our method of pleading, practice and procedure the trips of attorneys to the court house could be lessened; if the requirements for "pleading and practice" could be curtailed, without harm, in such a way as to save labor, inconvenience and expense to attorneys and clients; if the road to final determination of a litigated case could be shortened to the benefit of the taxpaying public, I felt that it was my duty and the duty of every member of this Bar, honestly and earnestly, to endeavor to bring about such accomplishments, and—to do it now.

At each annual session of this Bar, covering a period of more than twenty years, resolutions have been introduced and adopted, committees appointed to report and recommend concerning suggested reforms in the matter of our "Practice and Procedure;" Committees appointed were composed of the best talent of this Bar and they regularly reported and as regularly, and consistently, were the reports referred, to succeeding conventions of the Bar.

If our system of practice and procedure is all that it should be—letter perfect; if, in the opinion of this Bar, no changes can be wrought to the help of attorneys, litigants and the public, then it were well for this Bar to so, and finally, declare in order that the time so long devoted to the subject of reforms in our method of Pleading, Practice and Procedure might be utilized in consideration of other subjects of interest to the profession and the public.

By resolution, adopted at last convention in Vicksburg, the report submitted by Chief Justice Sydney Smith, reporting for committee on "Pleading, Practice and Procedure", was set to be taken up for consideration as the first order of business this morning and the committee was discharged, thus leaving the recommendations, in so far as their advocacy was concerned, without special sponsors.

After the adoption of the New Rules for Federal Procedure, rules which were the product of much work, much thought and much time on the part of a committee of the American Bar Association, composed of some of the ablest members of that Bar, the adoption of such rules for our circuit and chancery practice was generally discussed by members of this Bar. Dean T. C. Kimbrough, of the University called and generously arranged for the holding of an Institute on the New Federal Rules that attorneys interested might be fully advised as to their provisions and their application as to district and chancery practice.

On January 13, 1939, 283 attorneys responded to the call, assembled in the law building of the University and were addressed by Hon. Joseph C. Hutcheson of Circuit Court of Appeals, Hon. Virgil Griffith, Hon. Allen Cox, Federal Judge of the Northern District, Hon. Monte M. Lemann, member of Supreme Court Advisory Committee and Hon. Walter P. Armstrong of the Tennessee Bar. Much interest was manifested by the attorneys in attendance. It was very evident that at the present meeting of this Bar a resolution or resolutions would be offered recommending the adoption of the New Federal Rules, or certain portions of the rules, for practice in our state courts. Without suggestion or perhaps authority, I appointed a committee consisting of Judge Sidney Mize, Judge Virgil Griffith, Hon. Marion Reily, Hon. Chas. Garnett and Hon. W. E. Gore with the request that they consider the matter of the adoption of the New Federal Rules, or such parts as they might consider advisable to adopt, for our state practice. These gentlemen had served this state and this Bar with distinction; I was much gratified with their acceptance of the service. I have been advised, however, that after thorough consideration of the subject a report will be made without recommendation to the Bar. That some of these new rules could be adopted to the benefit of our practice I am certain.

RULE 35

This rule, if it could be adopted, destroys the protection (or what is left) of our "Privileged Communication" statute and should not, in my opinion, be considered or adopted for our state courts. However, if our own supreme court, as many contend by authority of some rule of reasoning, continues its process of "elimination" the provisions of this statute, intended to protect and hold inviolate the confidential relationship of physician and patient, will soon be entirely voided, and this, too, despite the fact, if it be a fact, that the much damned ambulance chaser is a back number, long outdistanced by the ambulance "rider" who first appears at the friendly hospital, at bedside of the maimed or dying victim armed with "forms" of release and verifying witnesses that he may, for benefit of the distressed patient, expedite, without controversy or trouble to the patient, a settlement of any and all claims which the patient may then have, or which might hereafter arise, by reason of the injury received. All this in behalf of an interested master or prospective negligent defendant. If there be any plaintiffs' attorneys who employ ambulance chasers, then the adjusters, acting for corporations and indemnity companies with knowledge of their principals, should properly be designated ambulance riders —they get to the hospital first. But whether ambulance chasers or ambulance riders, each equally guilty and deserving of the censure of all honest, right thinking men.

PRIVILEGED COMMUNICATIONS.

Section 1536, Miss. Code 1930.

"All communications made to a physician or surgeon by a patient under his charge or by one seeking professional advice, are hereby declared to be privileged and such physician or surgeon shall not be required to disclose the same in any legal proceeding, except at the instance of the patient."

THOMAS R. MARSHALL

Vice-President of U. S.—Governor of Indiana and noted lawyer —Speaking of Expert Medical Testimony, said:

> "I listened to these experts hired by myself and hired by opposing counsel in cases that were interesting and far too numerous to mention until I reached the conclusion that about the most spectacular fraud that has ever aired himself before the American people is the so-called medical expert. Their views are so frequently jaundiced by the pay they receive that it is the most difficult thing in the world to tell who is speaking the exact truth, uncolored by personal interest and who has suffered his views to be colored by his employment."

It was Marshall, too, who, when taunted with the fact that the only requirement of his state for admission to the bar was good moral character, retorted:

"It is far better to have less learning and more moral character in the practice of law than to have great learning and no moral character." There is such a thing as being too damn smart.

"Reason is the only torch,
Experience the only teacher and guide."

RULE 51

This rule provides the manner in which the *court* shall instruct the jury—"At the close of the evidence or such earlier time during the trial as the court reasonably directs."

Let us hope that the present method provided for instruction of juries in Mississippi will prevail always. There is no better or wiser system. Only last Saturday in Federal Court presided over by Judge Martin, Tennessee, thrice did a jury to which a cause was submitted for decision return into the court requesting that the instructions given by the court be repeated. And this is not unusual in jurisdictions where juries are instructed orally by the court. We are so prone to forget.

UNAUTHORIZED PRACTICE OF LAW

The Junior section of this Bar at their meeting held in Meridian, 1937, adopted a resolution condemning generally the unauthorized practice of law, which resolution was ratified and adopted by this Bar. At the annual meeting of 1938 the former resolution was re-affirmed in all respects.

During the past year a large portion of the membership of our Bar came to a realization of the fact that, for many years, it has been guilty of negligence to the public and to itself by permitting the proper and well defined field of the practice of law to be invaded by laymen and corporations. Indeed, while a large section of the Bar has been merely passive as to these abuses, quite a few have been active in their encouragement. I think it can be safely said that now all are willing to recognize and admit that it has been a mistake to have laid so long dormant, both from the point of view of the public and the profession. Bar associations throughout the country are striving now to correct the result of their own negligence and abuse.

Boyle G. Clark, general chairman of bar committees of the State of Missouri, recently instituted a proceeding against the Liberty Mutual Insurance Company and ten other joint corporation defendants charging the unauthorized practice of law. From a decision, favorable to the bar, in the lower court defendants appealed to supreme court.

Mr. Clark said:

"If the principles contended for by the plaintiffs in this case are to prevail, law schools, if they survive, would serve only academic purposes." * * *

"If in disregard of the public interest the practice of law is to be thrown open to unlicensed commercial practitioners, then the work of the state bar committees should end. It would be unjust to the lawyer to permit the unlicensed to compete with him in the field of his profession and at the same time impose upon the lawyers rules of professional conduct which the unlicensed cannot be compelled to observe. If the public interest and the administration of justice could be better served by destruction of the legal profession, then the plaintiffs in this case should prevail."

By request of the chairman of the committee I filed a short brief *amicus curiae* in behalf of the contentions of the State Bar.

Recognizing the sacred trust reposed in them, those authorized to practice law, responding to the urge of experience, have set up for their individual guidance precepts, restraints and prohibitions which in strictness of conduct extend far beyond the law. The rules of professional conduct and canons of ethics which govern the conduct of members of the Bar prescribe and require a standard of professional conduct and character which is unequaled by the ethics of any business activity and is not surpassed by any profession. By them the public is protected and benefited when transacting its business with members of the Bar. The sacredness of this trust is recognized and its fulfillment assured in many of the ethical canons governing the profession. The client's best interest constitutes the pre-eminent objective to which the lawyer must address the fullest energy and undivided loyalty. He can have and must serve no other master.

DISTRICT BAR ORGANIZATIONS

The Mississippi Bar Commissioners have been especially active in efforts to perfect organization of District Bars in every judicial district of the State. New organizations have been formed and many interesting meetings held. I know of no better way of interesting members in the work and doings of this Bar than by appealing to them personally to attend the annual meetings of the Bar, and take their places in the ranks of those who are patriotically and unselfishly endeavoring to make the organization everything it should be for the good of its members and the good of the State. I was much pleased with the interest manifested by the many who attended the district meetings, and am indebted to friends for numerous courtesies extended. I regret that I was unable to attend all District Bar meetings.

"When we know each other better
We like each other better
'Mongs't men whom men pronounce so ill,
We find so much of goodness still."

In this work, and in every other effort in behalf of this organization, our Bar Commissioners were most active, interested and always anxious to do their utmost in behalf of any movement that might promise practical help to the members of the Bar.

SUPPLEMENT MISSISSIPPI CODE 1930

In a communication which was directed to all members of this Bar last December regarding a proposal made by the Harrison Company of Atlanta, Georgia, to interest the Bar of Mississippi and the State of Mississippi in subscribing for a supplement to Mississippi Code 1930, it was suggested that it might be wiser (perhaps cheaper) for us to join in an effort to induce the 1940 session of our legislature to provide a new Code for Mississippi. If it is necessary to supplement the present code (with index) of 3287 pages with supplement of a like number, or more pages, in order that we may be advised concerning the varied enactments of our legislatures, and effects thereof, since 1930, then does it behoove this Bar to seriously consider the matter of a new Code for 1940. Since the proposition made by the Harrison Company for publicasion of supplement met with no favor by this Bar, the firm published the supplement and sent it post paid to the members of the Bar with option to return within thirty days or remit at price of $25.00. The Bar might well consider some of the methods of "high pressure" salesmanship indulged in by publishers.

THE UNIVERSITY OF MISSISSIPPI

February 15, 1939, I visited the University of Mississippi. It was an inspiration. It should be an inspiration to any one to meet there and mingle with the members of the faculty of that great Institution and with students—from everywhere—students who are soon to take their places in the affairs of life and the affairs of this State, and especially those who are to fill vacancies in the ranks of this Bar, made, by reason of death or misadventure.

The University of Mississippi buildings, after the battle of Shiloh, sheltered more than 1500 sick and wounded Confederate soldiers, 700 of whom today sleep in unmarked graves near the campus on the University grounds. "The earth may run red with other wars; they are at peace, in the midst of battle; in the roar of conflict, they found the serenity of death." There, too, within the campus grounds repose the sacred ashes of the great L. Q. C. Lamar.

The University of Mississippi sent to the stage of state and national life many men who left the imprint of their genius upon the laws and policies of the land and shared in making the history of the world and from its doors there passed to the great forum of state and national life:

A. H. WHITFIELD—One of the greatest orators of all times.

HERNANDO D. MONEY—The most thoroughly informed man who ever sat in the senate of the United States. When he fell asleep at his home on the Mississippi coast, his hands were empty.

WILLIAM V. SULLIVAN—United States Senator, learned, impulsive, and who never shirked a frolic or a fight.

JUDGE EDWARD MAYES — The greatest constitutional lawyer and master of diction of his day and generation, regarded by students who secured their legal education under him as the leading law educator of the South.

COL. HENRY L. MULDROW—Assistant District Attorney of the Grover Cleveland administration.

JOHN M. ALLEN—One of the most distinguished representatives who ever went from the State of Mississippi to the National Congress.

ROBERT H. THOMPSON—One of the earliest graduates of that law school, twice President of the Mississippi Bar Association, and one of the most ethical practitioners of the Bar.

J. A. CAMPBELL—Chief Justice of Supreme Court of Mississippi, and author of Code of 1880.

HON. L. Q. C. LAMAR—Member of Congress, United States Senate and President Cleveland's cabinet, where he served with great distinction.

LIEUTENANT GOVERNOR GARVIN D. SHANDS—Dean of Law School, gallant Confederate Soldier.

HON. C. H. ALEXANDER—Brilliant, resourceful, courtly and profound.

JUDGE W. H. POWELL—Lovable, genteel, convivial and generous.

HON. SAM C. COOK—Thoroughly grounded in fundamental principles of law, served with distinction on circuit and supreme court benches.

HON. JAMES SEXTON—Eminent lawyer, always interested in maintaining the honor and dignity of the Bar.

HON. A. T. STOVAL—One of the most princely lawyers of his time.

Did time permit I would mention scores of others who filled positions of honor and distinction because of inspirations received while attending the law school of the University of Mississippi. All—all men "who never sold the truth to serve the hour."

I believe there has gone out from that institution as fine a set of men as you will find anywhere else in the world.

What a privilege! What an opportunity for the youth of Mississippi to be educated, trained and prepared for the practice of law and for the practice of life in an institution with such a glorious history.

It was Justice Marshall, in his Dartmouth College decision, touched by the appeal of Daniel Webster for his Alma Mater, who held that a charter granted by the state was a contract no state could impair.

What might have happened but for the eloquence of Webster and the wisdom of Marshall? Yet it is known by all men who investigate that the faculty of this University is not sufficiently compensated for the services rendered. This is a subject well worth the attention of the members of this bar.

THE LAW

Elihu Root declared: "The law is a public profession, by which, more than by any other profession, the economic life and the government of the country are modeled."

There is no greater profession than the law. None has a greater history; none has had greater men; none has higher ideals or presents greater opportunities for honor and advancement. In no other profession do honesty of purpose and honesty in fact contribute more highly to success. Its members have included some of the most brilliant intellects and the greatest benefactors of all mankind. It is the profession which rights the wrongs, preserves the liberty and protects the property of our citizens. It has blazed the path along which religious liberty has advanced. It has led in every struggle for civil liberty, forcing charters, constitutions and bills of right from the tyrant, and has made government the servant of the people. Our profession, despite all criticism, has been a most powerful factor in securing and preserving to mankind the right to enjoy life, to be free, and to seek happiness.

Science has cut the world adrift. Invention has destroyed the old landmarks of life.

Big business grows bigger. The earth grows smaller, radio and air routes make every nation our next-door neighbor. We live through more confusion, conflict and change in ten years than the ancients in ten hundred. Who are the skippers who can guide us through these social storms; where are the captains with the judgment and skill to sail safely down those winds of change? Before answering this question, permit me to ask and then try to answer the question: "What Makes Men Leaders in Society?"

They must have courage, and in part have it because they know their jobs. The man who is doubtful is sure to be slow and timid.

"Upon the plains of hesitation
Bleach the bones of countless millions
Who at dawn of victory sat down to
Rest, and resting died."

Lawyers who demonstrate leadership in society are grounded upon the broad and deep principles of jurisprudence rather than upon "wise saws and modern instances." But over all is reflected the illumination of a strong common sense and a refined tactfulness. To his clients the lawyer is an object of confidence and real affection; the secure depository of family secrets, and the safe guide and counsellor in trouble and difficulty; When in actual trial strong, aggressive, confident; respectful to witnesses, to jurors and to judge, as well as to his adversary.

Our's is a lawyer's government. The checks and safeguard against revolutionary action which distinguished the institutions of the United States from those of all other democracies, are the fruits of the wisdom and foresight of great minds trained to the law.

In 1843 James Russell Lowell, said:

> "New times demand new measures and new men;
> The old advances and in time outgrows
> The laws that in our forefather's day were best,
> And doubtless after us some purer scheme will be
> Shaped out by wiser men than we,
> Made wiser by the steady growth of truth."

The Bar from year to year increasingly recognizes the truth of that statement and recognizes, too, that the lawyers of America have a very special leadership in the devising of new measures and the selecting of new men. They, more than anybody else, are in a position to realize when the laws, that in our forefather's day worked best, have been outgrown in time. Their experience teaches them not to expect of their own or of any other generation final wisdom. The most that we can do is to devote our wisdom to the conditions of our day.

Every now and then some voice is raised in protest against the prominence of lawyers in our public affairs. If this be an evil, it is wholly inescapable. Having substituted a fixed constitution for the changing will of a monarch, and having determined to protect certain great fundamental principles by writing them down in an authoritative document, we must rely upon lawyers both to make and interpret our laws. In no other way can the guaranties of the Constitution be assured. It is necessary only to mention such names as Judges Holmes, Brandeis and Cardozo, great lawyers, to indicate the extent to which the people look to their lawyers for guidance. Their names will ever be enshrined in the pages of history as truly great jurists.

The Bar has a right, as a profession, to be proud both of what it is trying to do and of the great amount of the very best conscience and intelligence in the country which the lawyers are devoting to the improvement of the judicial system, without compensation or hope of any other reward than comes from the satisfaction of making the profession a useful public servant.

In a calling so high; so honored by the lives of statesmen and orators of the past; honored by being the body of followers whose laws govern humanity; honored by having framed great constitutions, systems of government, and national settlements that preserved the lives of nations, with all of them to remind us, and inspire us, how small, and low, and mean, seems the petty quarrel, and how great and grand are wisdom, honesty and nobility. Let us talk, act and live in friendship. Let us live, and do our duty, ever remembering that:

> "Tis a little thing to give a cup of water, but its draught when drained by fevered lips gives a shock of pleasure to the soul more exquisite than when nectared wine renews the joys of life in happiest hours.
>
> 'Tis a little thing to speak a word of common comfort which by daily use has almost lost its meaning, but on the ear of him who thought to die unmourned it falls like choicest music."

Democracy in America is facing a challenge greater than ever before. With leaders possessing the ability to think and to ascertain facts, combined with mental honesty and moral courage, America can face the challenge without fear. And we feel that the great majority of the leaders who possess these qualities are to be found in the ranks of the legal profession.

Love of country will inspire us to defend it against all perils—to destroy, if need shall come, the menace of "swollen fortunes" even at the hazard of making them our own.

DUTIES OF ATTORNEYS

Sec. 3693—Code 1930.

Article 4. "To maintain inviolate the confidence and, at every peril to themselves, to preserve the secrets of their clients."

Article 7. "Never to reject for any consideration personal to themselves the cause of the defenseless or oppressed."

In closing I want to repeat, and thereby help preserve in the hearts and minds of the members of the Bar of Mississippi the words of the Honored and venerable Jeff Truly past member of the Supreme Court of our State and past President of this Bar. He said:

> "I can look back and of personal knowledge name to you and tell you of the great men who have been, just as you younger men are now, at one time tyros in the profession of law, and yet, of their own native ability and manhood rose to be the recognized leaders not only of the Bar of Mississippi, but of the Bar of the whole United States.
>
> Shall I go back and tell you of the great orator of Mississippi who, upon the floor of the Senate of the United States, defended the rights of the South in a way no man

could answer? This great man—the greatest orator ever produced—L. Q. C. Lamar—towered preeminently as a leader of men in time of war, a great jurist of the Supreme Court of the United States, led the Senate by his eloquence and dominated the court with his learning.

Shall I go a step further and leaving oratory go to the substantial strength of principle and legal ability which, perhaps with one exception, has not been equalled in Mississippi? Stern, indomitable, abrupt, yet sound to the core, who upon the floor of the Senate so clearly demonstrated the right and power of Mississippi to enact such electoral provisions as its peculiar conditions demanded, that opposition fell by the wayside and the mendacious malignity of the South haters was defeated and the blasphemous tongue of Henry Cabot Lodge was silenced forever—

JAMES Z. GEORGE. This great commoner who by the force of his logic and his unanswerable constitutional argument struck from the rights of freeman the shackles of oppression and established White Supremacy forever and aye, in the great commonwealth of Mississippi.

I could go further and tell you of the great lawyers who have lived in every section, in every county, of this State whom I have known personally. Men who in their era shed luster on our profession. Who in this audience has ever seen—if no lawyer has, he will never now hear the equal—the dramatic oratorical duel which took place between that eloquent teacher and exemplar of the young men of the State—Lieutenant Governor Shands—and that greatest constitutional lawyer and master of diction of his entire day and generation—Edward Mayes—before the State Senate.

I could tell you of the gallant Walthall, of the peerless Calhoun, of the Brilliant Fewell, Wood, and Huddleston. I could name them by the score from every section of Mississippi. Glorious names troop to the memory and would, if time permitted, fall trippingly from the tongue. But I refer you to these simply that the younger men of this Bar may not believe that it is true that the profession of law is a degraded money grabbing trade. Remember, you are Lawyers.

I pray you to remember the beams of glory that come from the past, that radiate the present, and point out the path of duty for you younger men in the future. The lawyers of Mississippi will always stand as they have stood—ahead or abreast of any Bar, in any State, anywhere.

The law! It ranks above them all. The minister points the way to the eternal future, strengthens the faith and revives the hope of a blissful immortality. The lawyer

soothes the troubled mind and brings solace to the man grieving over the loved ones soon to be left; eases the dying by the assurance that the widow and orphans will receive the guidance of a faithful hand.

To the lawyer comes the man who is sick financially; comes the man who is sick physically; comes the man who is sick morally—not for escape, but for advice and correction.

The faithful lawyer by daily work teaches both young and old how honestly to live and how to assist in the upbuilding of the community and state in which his lot is cast.

Save only the Heaven-sent relationship of mother, there is no class to which the legal profession need doff the cap of obeisance. But to the mother all must bow, for 'twas at her knee we first heard and with prattling tongue repeated the first lessons of rightful living, and there first imbibed the guiding principles of honor and truth.

'My mother who fed me from her gentle breast
And hugged me in her arms to rest
And on my cheek sweet kisses pressed, my Mother.
When pain and sickness made me cry
Who was it sang sweet lullaby
And rocked for fear that I should die—
My Mother.'

It behooves the profession of Mississippi today to stand firm for everything that is right, and spurn everything that is wrong.

Banish and ostracize the fawning lawyer who boasts of being a friend of the court, and desires to pose as having an "inside pull" with the judge. Who attempts to seek the chamber of the judge through alley or back stairway, oblivious of the fact that efforts in this regard not only cast suspicion upon the judge but brands himself as being unworthy the profession to which he is a disgrace. With all the fervor of my soul I resent the suggestion that any lawyer should or does have any private influence with a judge, who does not himself disgrace the ermine.

And so I say, stand firm. I want you to rally now to the defense of the profession and to assist in protecting its reputation. We are the representatives of the legal profession of the State of Mississippi—The leading profession.

WE ARE:

First in Charity:

First in Humanity: No class or profession ever equalled the lawyers in being willing to help the common people or in going to their defense in time of trouble.

First in Leadership yielded to them by virtue of their profession and merited by their manhood and high standards of conduct.

I glory in my profession, and I glory in the fact that there is a very small percentage of the profession that is subject to criticism of any kind. I thank God for it, and I want you, and I pray you, for the sake of young men everywhere to stand firm to the principles of rectitude and right.

The Bar of the State of Mississippi: "Its glory in the past; its protection in the present; its hope for the future."

To the Bar Commissioners for their loyal and helpful support; to our competent and painstaking Secretary, Mrs. Alice Nevels, for her splendid efforts; to the editorial staff and members of the Law Journal Board; to the members of the program committee for their pains, energy and foresight in preparing the program for this convention; to every friend and to every man who during my administration lent his help in any way for the advancement of the things that might mean for the betterment of the Bar of Mississippi, I am profoundly grateful.

"May you all live long and prosper." (Applause)

I am assuming that we are about to enter upon what will perhaps be the most controversial, if not interesting, part of our program. This number on the program was fixed at the meeting of the last Bar, the discussion of the reports of "procedural reform committee", led by Judge W. W. Venable of Clarksdale. This discussion is wide open to be participated in by any member of the Bar.

HON. MARION W. REILY: May I ask for information, Mr. President?

THE CHAIR: Certainly.

MR. REILY: At the last meeting of the bar a report was filed, dealing with the question of procedure. Judge Sydney Smith was chairman of the committee, other members of the supreme court were on that committee, circuit judges, chancellors. They filed a report dealing with this very question.

THE CHAIR: I have that report, I have a copy right here.

MR. REILY: At the last meeting of the bar we agreed that that report would be the first thing taken up at this meeting.

THE CHAIR: That's correct.

MR. REILY: There are some of us who want to be present when that is done, and I rise to ask if that will be set aside or what time shall we take that report up.

THE CHAIR: I am going to leave that to the pleasure of the bar. As was stated in the 1938 report, that report made by Judge Sydney Smith—I referred to that in the opening part of my address. It was made and the committee discharged and I have that report, and by resolution of this bar it was fixed by the resolution as the first item of business to come up at this meeting. I just leave it—if a motion is made to leave it up to the bar to conclude whether or not that report made by the committee, of which Judge Sydney Smith was chairman—whether they want that to be taken up and considered first on the program as fixed by the program committee.

MR. REILY: Is it in order for a motion to be made?

THE CHAIR: I think so.

MR. REILY: I wish to make a motion that that resolution which was passed on by the last bar meeting, last meeting of the bar, in which those assembled, by a majority vote, voted that that report made by Judge Smith should be taken up as the first matter of business at this meeting, I make the motion that that report be taken up and dealt with as voted at the last meeting of the bar.

VOICE: Second.

THE CHAIR: You have heard the motion and duly second.

MR. ELLIS: What was that report?

THE CHAIR: You have not been reading your Law Journal.

MR. ELLIS: Yes, I have; give the essentials of it.

THE CHAIR: I will ask Judge Smith, the chairman of the committee, to give the essentials of the report in order that we may go into a discussion without reading the entire report.

JUDGE SMITH: We were appointed for two things: one was to report to the bar a recommendation of some sort with reference to the new federal rules, if we could, and in addition to that report any suggestions that might occur to us for reform in our procedure.

The committee was unable to make any report about the federal rules and made none about those.

The committee did make some suggestions as to which Judge Ethridge is more familiar than I am as to some minor reforms. They have all been published and the committee made its report, discharged the purposes for which it was created and was relieved from further responsibility in the matter by the association, so

the committee does not now function as a committee, but as individual members can do as they please, and the matter is open for your consideration.

THE CHAIR: Thank you, Judge Smith.

HON. L. A. SMITH: What I want to know is how far this discussion is going and how much it is limited. I understand Judge Venable has something to say on the proposition, which should be heard too.

Up in our section in north Mississippi in our district meeting, they voted to let them alone for a while, and they asked me to come down here and say to you to let them rest until they can be tested out by the Federal Courts before we start experimenting with them also.

THE CHAIR: The motion is whether or not we are going to take up and pass upon the report made by the committee headed by Judge Sydney Smith, or whether we are going to take up the matter as designated by the program committee.

By resolution of the bar at the last meeting the report made by Judge Sydney Smith was set for the first order of business at this meeting. It is for the bar to decide that motion.

MR. CULKIN: The program committee had before it the report of Judge Sydney Smith. The bar committee which arranged this program, assumed that Judge Smith's report dealt with certain changes, if any—and in preparing the report we simply designated as discussion of the procedural reform the first order of business, which was done absolutely in compliance with the resolution which was passed at Vicksburg, for that particular matter to be made the first order of business. There is no difference whatsoever, except we tried to designate certain people to present various points of view. We want the proposition discussed if you want it discussed, and if you do not it is very easy to vote to indefinitely postpone.

THE CHAIR: The question is whether we are going to have this report before we take the report relative to the new rules.

HON. CHARLES F. ENGLE: What is there in the report about new rules; they made no recommendation as to the new rules.

THE CHAIR: We are voting now as to whether we shall take up the new rules.

SENATOR L. L. POSEY: Is it not according to the statement made on the floor, the purpose of the committee to have committee report submitted by Judge Smith and argument led by Judge Venable?

THE CHAIR: No, it is not the same thing. The suggestion made by the program committee is that that be confined to the new federal rules—the adoption or non-adoption.

MR. CULKIN: The idea of the committee was to take up the ideas or theory presented by Judge Smith and other elements that might necessarily be involved, with the discussion of any reformation by way of procedure. There is no conflict whatsoever. Our program committee did not want to talk about the new federal rules; they are not before us; the idea was to take up any changes that might be made in practice and procedure in Mississippi, prorated on what Judge Smith and his committee had presented at the last meeting for discussion. That is the idea.

HON. E. L. DENT: To avoid any confusion and in order that members of the bar may speak their conviction on this matter, I move that no action be now taken as to the changes in our practice and procedure in the state of Mississippi, and that our practice and procedure in the state of Mississippi remain in *status quo,* regardless of report of any committee and regardless of any federal rules.

VOICE: Second the motion.

MR. ENGLE: There is already a motion before the house. If we are going to take up Judge Smith's report and number of recommendations I suggest that we take them up seriatim. I make a point of order that that motion is out of order.

MR. DENT: Then I substitute my motion for whatever motion is before the house.

VOICE: Second the motion.

JUDGE GEO. H. ETHRIDGE: I ask that the recommendations of Judge Smith's committee, of which I was a member, be read for the information of the Bar.

THE CHAIR: I suppose we will get to that if we ever know what they want to take up first.

MR. DENT: They may be read in discussion of my motion as to whether or not we want to adopt the federal rules or change the rules of the state of Mississippi as to our method of procedure.

THE CHAIR: I will put the substituted motion, and state before it comes to a vote, I will read the recommendations.

HON. L. A. SMITH: We have taken a positive stand up in our section not to change our procedure until after it is tried out in the Federal Courts.

MR. ENGLE: I want to call attention to a very grave injustice that we committed this morning. We listened to poetry composed by Mr. Ellis in the iambic and trochaic meter, but we did not extend him the privilege of reciting to us a poem in the dactylic meter, and I suggest that Mr. Ellis be extended the invitation to write a poem in the dactylic meter and have it inserted in the record.

THE CHAIR: Very appropriate but out of order.

State your substitute motion, Mr. Dent.

MR. DENT: Gentlemen of the bar, my motion is to expedite the discussion, not to deprive any member of the bar to discuss this matter. The report of the committee of the judges may be read in connection with my motion so it will enlighten members of the bar and myself as to the propriety of changing our procedure at this time, and my motion is—shall I repeat the motion?

THE CHAIR: Repeat the motion.

MR. DENT: My motion is to dispense with all committee report of whatever character and discharge the committee and decline to adopt anything changing our present practice and procedure and let our practice and procedure stay *status quo.*

HON. J. H. CALDWELL: I think it would be an injustice to some members of the bar who have been invited by the commissioners to be here to discuss this question on the program, an injustice to the program committee, not to have any discussion of this item of business, the report of procedural reform committee led by Judge W. W. Venable, and there are others here who have prepared themselves to lead one side or the other of this argument, and that may be all right at the end of the discussion.

MR. DENT: No, I don't want to shut it up; I want to throw it open and give all of the people an opportunity, an expression from the bar.

MR. CALDWELL: It dispenses with this idea of the program.

THE CHAIR: His motion is that we consider both of these propositions instead of considering them separately?

MR. DENT: Right, consider them together.

THE CHAIR: The question is whether we shall adopt the recommendations of Judge Smith's committee or of any other committee or resolution pertaining to the new rules: is that it?

MR. DENT: That's correct.

MR. ELLIS: I was a member of that committee, helped to get up the program. Judge Venable is a venerable, able man, qualified to discuss it. I hope we can hear also from Judge Smith and Judge Ethridge. We want to hear from Judge Venable. We put him on the program for that very thing.

THE CHAIR: We want to hear from all of them.

JUDGE FRANK E. EVERETT: The idea of Mr. Dent is to have the report of which Judge Smith was chairman, at the last meeting in Vicksburg, presented, so everybody can understand and then discuss that first, and when that has been discussed, discuss the balance. Is that right?

MR. DENT: Any way.

THE CHAIR: All in favor of adopting that procedure will say aye; opposed no. The motion is adopted.

Is it your desire that I read the recommendations of Judge Smith's committee before you go into the discussion?

MR. DENT: That's all right.

MR. REILY: Mr. President, you did not announce the outcome.

THE CHAIR: The ayes have it.

This is the first recommendation:

"That in trials in justice of the peace and other courts, from which appeals lie to the circuit court, and are tried de novo, where a jury trial is had the jury need not be unanimous, but two-thirds thereof may agree upon a verdict in civil cases, and in misdemeanors and this shall be treated for all purposes, as the verdict of the jury, judgment being entered thereon in the same way, and with the same effect, as if it were unanimous. This, it is thought will save delay and expense. But this procedure shall not be applied to courts where the jury verdict is final, and the appeal is upon the record."

MR. REILY: Does that deal with criminal cases?

THE CHAIR: I will read it again (re-reading).

MR. REILY: That committee, composed of distinguished men, wrote letters to every lawyer in the state, asking for suggestions—they received replies, many of them; they wrote the chancellors of the state, circuit judges, and that report is the result of serious and earnest work. We cannot vote intelligently, in my humble judgment, on that report as a whole. There are some things suggested that some of us might think well of; there are some things suggested that we might not agree with, and therefore, I submit before we can vote on them intelligently, the various suggestions should be taken up one by one so we can discuss them before we vote on them.

MR. DOTY: Is that a motion.

MR. REILY: Yes, I make it a motion.

MR. DOTY: Then I second the motion.

THE CHAIR: Gentlemen, you have heard the motion and second, that we take up the suggestions of the committee, the report headed by Judge Smith, each recommendation, and vote on them separately.

HON. GEORGE BUTLER: If we do that, we cut off discussion of whether we are going to recommend the adoption of the federal rules.

THE CHAIR: No.

MR. BUTLER: If the federal rules are adopted, some of those recommendations will be taken care of; if they are not, then it might be important to consider certain of those recommendations; the federal rules do not cover all of the recommendations.

HON. FRED BELK: Mr. Chairman, I make the motion that all consideration of the adoption of the federal rules be indefinitely postponed.

VOICE: Second the motion.

THE CHAIR: You have heard the motion, to the effect that the discussion, in so far as the new federal rules are concerned, be indefinitely postponed—

MR. BELK: No, not the discussion—the adoption.

THE CHAIR: That would dispense with discussion.

MR. ENGLE: That is out of order; there is no motion to adopt.

THE CHAIR: I think the order of procedure is that we consider these recommendations made by the committee of which Judge Smith was chairman, and the new federal rules; that we consider them jointly, and that is the motion carried by the house.

MR. BELK: As a substitute for any and all existing motions now before this house, I make a motion to indefinitely postpone the consideration by this convention of the adoption of the federal rules.

THE CHAIR: I believe at this time the motion is out of order.

MR. ENGLE: You could not adopt any rule that sealed the lips of any member of the bar and stop him from making any motion.

THE CHAIR: The motion is out of order.

MR. ENGLE: You cannot lock him up, you cannot gag him that way. We are here having a lot of fun in discussion—the legislature is not going to pay a d____ bit of attention to whatever this house recommends, but I do not want to be gagged, I don't know how I would vote or talk, I know so little about them, but I don't want to be gagged.

MR. DOTY: As I understand it, we are to vote upon the recommendations made by the committee of which Judge Smith was chairman.

THE CHAIR: No that is not the motion.

MR. DOTY: What is it then?

THE CHAIR: If there is a motion, the motion is to take up the recommendations seriatim, and the motion has been seconded. Mr. Reily, state your motion.

MR. REILY: My motion was that this report filed by Judge Smith be considered section by section and voted on section by section and my motion received a second.

MR. DOTY: I seconded that motion.

THE CHAIR: All in favor of the motion will say aye; all opposed no; the motion carried.

The gist of the first recommendation is that in cases before a justice of the peace a majority of the jury may bring in a verdict. All in favor of the adoption of that suggestion will say "aye", contrary "no". A division is called for and I will ask all in favor of adoption of the recommendation will stand up and be counted.

(A count showed 42 for)

All in favor of rejection of the recommendation will rise.

Without a count I will say that you reject the recommendation of the first suggestion.

I will read the next one, No. 2.

"That section 568, Code of 1930, providing that variance shall not be material in any case where the attention of the court is not called thereto, should be repealed, as pleadings should be a part of the record, and the effect of the judgment should be *res adjudicata* only where there is evidence to sustain the action set out in the pleadings. The opposite party should be enabled to rely upon the action stated in the pleadings, and not be put to the hazard of oral proof to show what was involved in the action. He is entitled to rely upon the specific action set forth. Pleadings now can be amended when necessary to achieve the ends of justice at any time before rendition of the verdict, and this should remain the law. But a litigant should not be allowed to present one cause of action and recover on evidence in another."

MR. REILY: It is a practice sometimes indulged in—one man wants to sue another and sues him, and charges him with everything under the sun, and then gets in court and stands on whatever leg the testimony justifies him standing on. The hope of this country is that the people may have confidence in the law and in the lawyer. If we want to be worthy of our profession, if we want the law to be relied upon by good men and good women, we ought to take out of the law everything that makes it possible for chicanery or deception to be practiced. I say that is a good motion and I am in favor of it. If a lawyer does not know his case he has no business filing a law suit. If he has a lack of defense, or no defense to a case the declaration ought not to be filed, and no declaration ought to be filed against a man unless the facts set forth therein are within the knowledge of the lawyer and he has confidence in their truth.

VOICE: Second the motion.

MR. ENGLE: As Mr. Reily says, no defense except an honest defense should be made, therefore, we ought to do away with the plea of the general issue—it is not an honest defense—and make the defendant admit or deny specifically the material allegations in the declaration filed; that is in line with the federal rules.

There is no more dishonest defense in the world than the general issue.

HON. C. L. GARNETT: I do not understand what connection the plea of general issue has with this motion, but I would like to dissent from the statement that the plea of general issue is not an honest plea. Maybe counsel does not understand the effect of that plea under our decisions. It puts in issue every material allegation of the declaration. In the beginning it was given a wide construction, and under it the defendant could offer in evidence almost any matter that would defeat the plaintiff's suit, but that was changed. By the Rules of Hilary Term it was much narrowed, and under it the defendant is held to have denied only the material allegations of the declaration, and such is the construction now given it by our Court. It doesn't put in issue all matters alleged. If it is charged in the declaration that the defendant is a corporation or a copartnership, the plea of general issue will not put in issue the allegation of incorporation or copartnership; but to put the charge of incorporation or copartnership in issue the defendant must enter a plea under oath denying the incorporation or copartnership; the general issue would not be sufficient to raise that issue. If the declaration is based upon a written instrument, the plea of general issue would not be sufficient to put in issue the execution of the instrument or the genuineness of the signatures, but to question its genuineness or the signatures a plea of denial under oath must be filed; the general issue would not put that matter in issue.

So, considering what the plea of general issue really puts in issue, it merely calls upon the plaintiff to prove his material charges, and as so construed I think it may be a perfectly honest plea. It originated in the idea of serving the convenience of the lawyers. In the day when there were no stenographers, no typewriters, and men wrote with goose quills on parchment, they were economical of their words; we might to some extent imitate them today. In the beginning the defendant denied in the terms of the allegation traversed. For instance, in suit on covenant of lease, by the terms of which the defendant agreed that when he vacated the premises he would leave the tenement in good repair, and the plaintiff charged that upon vacating the premises the tenant left the windows, doors, and roof of the tenement ruinous, in decay, and out of repair, the defendant, under the old form, would deny in terms of the allegation traversed; that is, would deny that upon vacating the premises he left the tenement, and particularly the windows, doors, and roof, ruinous, in decay, and out of repair. The plea of general issue as now used, without denying in terms of the

allegation traversed, would put the facts charged in the declaration in issue; but not the execution of the instrument or the genuineness of the signature, which would have to be denied by plea under oath.

If you sue in debt for a fixed sum or a sum that may be made certain by calculation, the general issue is "not indebted in manner and form as in the declaration alleged," and what more of a plea do you want to put the fact of debt in issue? I grant an exception in suit on open account, which the plaintiff may verify; and the defendant, in disputing the account, must point out the items he proposes to dispute, and make a counter affidavit; but in most suits for debt why is it not sufficient to plead that the defendant is not indebted in manner and form as in the declaration alleged? Of course, if the defendant wants to plead payment, the general issue would not be sufficient, but there would have to be an affirmative plea of payment.

If the suit is based on promises, a written instrument not under seal, it is sufficient to say that the defendant did not promise or undertake in manner and form as in the declaration alleged. Why isn't it an honest plea to say that he did not promise or undertake in manner and form as in the declaration alleged? Under our amended procedure the old distinction between instruments under seal and instruments not under seal amounts to nothing, and in suit on a written instrument, the general issue would not put the fact of its execution or its genuineness in issue, but to raise that issue there would have to be a denial by plea under oath.

Where the suit is based on a trespass, the issue is different. You would plead that the defendant is not guilty of the wrong and injury, or any part thereof, as alleged in the declaration; or if it is trespass on the case, that the defendant is not guilty of the premises laid to his charge in the plaintiff's declaration. And those pleas are sufficient to require the plaintiff to prove the material facts alleged in his declaration.

VOICE: Point of order, Mr. President: that is not before the house.

VOICE: It is a bad time to start to change; we had better stand pat.

THE CHAIR: All in favor of the adoption of section two of the committee report will say "aye". (Division was called)

(The vote was counted resulting in a count of 55 for.)

The contrary will stand.

(Whereupon the vote was counted, resulting in 57 against)

Adoption has failed by two votes.

Mr. Culkin will please read the third section of the committee report.

MR. CULKIN: (reading) "That section 586 Code of 1930, be amended so as to permit the circuit judge, when, after both sides have offered their instructions, he shall be of the opinion that applicable principles have not been requested, to call attention to such omissions in the absence of the jury and suggest to counsel on both sides to draft such principles; and, upon their failing to do so, to draft them himself and give them in charge to the jury in writing. But counsel on either side may except to the giving of such instructions and shall not be held to have waived their right to object by using them, as they shall be required to do, in other cases. The judge may modify, refuse or give such instructions prepared by counsel under his directions, and such modification shall be subject to exception, and no waiver shall be held applicable for the use of such instructions, as required. That the section be amended so as to read:

> 'The judge in any case, civil or criminal, shall not sum up or comment on the testimony or charge the jury on the weight of the evidence, but at the request of either party he shall instruct the jury, in writing, upon the principles of law applicable to the cases. All instructions asked by either party must be in writing, and all alterations or modifications of instructions given by the court, or refused, shall be in writing, and those given must be taken out by the jury on its retirement. Whenever both sides have presented to the judge the instructions which each desires to have given in charge, and the judge shall be of the opinion that other or additional instructions should be given, he shall, in the absence of the jury, call attention of counsel on both sides to such principles as he thinks should be given in charge, and request them to prepare and present such instructions in writing, and if, after such request, counsel do not present suitable instructions on such propositions, the judge shall give on his own judgment such instructions in writing to the jury for their guidance; but either side may object or except to the giving of such instructions, or any of them, and shall not by using the instructions waive his or their objection, and such objections may be assigned for error on appeal. But the use of an instruction modified by the judge over objection, shall be held to be a waiver of the objection. All instructions shall be marked by the clerk before the jury retires, " 'given' " " 'refused' " or " 'modified' ", as the case may be, and being thereupon filed by the clerk, become a part of the record without a further bill of exceptions. All instructions for either side shall be read to the jury before arguments begin.' "

THE CHAIR: Just in short, this is hard to understand from reading, but it is not hard to understand: it is just this: if after instructions are presented to the court, if the judge himself thinks that they have not sufficiently instructed the jury on certain points, then he of his own volition can present certain things to the attorneys to present to the jury, and if they refuse he can present them himself.

HON. W. I. STONE: I move that these recommendations be rejected.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second that this item of the report be rejected. All in favor will say "aye" opposed "no". The "ayes" seem to have it; the "ayes" have it.

Mr. Culkin will please read the fourth recommendation of the committee.

MR. CULKIN: (reading) "That section 1272, Code of 1930, be so amended as to permit persons jointly indicted for the crimes of robbery, larceny, burglary or kidnapping to be tried jointly, in the discretion of the judge, where the evidence for the state is against all of them. That said section be amended to read:

> 'Any of several persons jointly indicted for a felony (except burglary, kidnapping, robbery or theft) may be tried separately on making application therefor before the order for a special venire in capital cases, and before arraignment in other cases. In cases of kidnapping, burglary, theft or robbery, where more than one defendant is charged, the evidence being the same against all of them, they shall be tried jointly; but where, for good reason shown, the trial judge is of the opinion that prejudice or bias existing as to some of them may affect others in a joint trial; or where one may have a special defense which might be prejudiced by a joint trial, or in cases where the state has evidence as to one or more which is inapplicable or prejudicial to others, a severance may be allowed.'"

MR. STONE: I move that it be rejected.

MR. REILY: Second the motion.

THE CHAIR: All in favor of the motion as seconded will say "aye". The ayes have it and it is rejected.

The proposition of the recommendation of Judge Smith's committee has been disposed of and the adoption of the federal rules is now before you.

MR. BELK: That has been completed.

VOICE: No, it has never been started.

MR. BELK: Is there a motion before the house?

THE CHAIR: No, we have finished the committee report headed by Judge Smith. What time is it?

VOICE: 12:35.

THE CHAIR: I am going to suggest it is luncheon time—

MR. BELK: I definitely move that the consideration of the adoption of the federal rules in Mississippi be by this convention indefinitely postponed.

VOICE: Second the motion.

CHAIR: Any discussion of the motion, which I am sure you understand.

VOICE: Question.

MR. ELLIS: Don't do that; that motion is out of order. I do not think we ought to treat Judge Venable that way. He has been specially invited to come here and present this matter to us. I believe we here ought to hear from him.

VOICE: Vote.

MR. BUTLER: There is a motion before the house. It would be manifestly unfair to preclude Judge Venable and other persons here from discussing the proposition of recommendation of the adoption. It is not going to be carried by this house, and if it were carried by the house, in my judgment, the legislature would not put it into operation, but you ought to give these people an opportunity to talk about it.

VOICE: No, no.

HON. J. A. YEAGER: Mr. President, gentlemen of the Mississippi Bar, I am reminded of a conversation that I had with the president of a great college one time. I said, 'Mr. President, by reason of the influence of religion, this country has made wonderful strides in its forward movement and progress, has it not?' He said 'No, we have made progress in spite of religion.'

Now, we have had before us this morning several very constructive and progressive and expeditious propositions. We have voted in opposition to them all. We now have in this country the new federal rules of procedure, which in the judgment of some lawyers is a wonderful and a great step forward in the orderly administration and the rapid discharge of justice in the courts. Others think those rules are somewhat detrimental. All men are entitled to their views and to a right to express those views. The Mississippi bar, in my judgment, is confronted with some very serious questions in the state of Mississippi today, and one of those questions to be determined by us is shall we move forward, shall we meet the pressing need of the day and travel forward with the modern trend of things and meet the necessary demands of the people in their requirements for the rapid discharge of business, the economical maintenance of the courts and orderly administration of justice. The scrutinizing eye of the critical is upon us, we are going through a travail, so to speak. Shall we meet those demands, or shall we remain in the old antiquated rut and refuse to move forward? I am not advocating the adoption of federal rules, and I am not against the new federal rules of procedure. As for my part I am in favor of a unified rule of procedure, identically the same for the state and federal courts. But many of my friends of this bar are opposed to that now. The thing I am asking for is an open, a fair, and an honest discussion before this assembly and this convention of these vital questions that are before us and not vote down the propositions which are remedial and progressive without allowing a proper hearing and giving due con-

sideration to these matters which are before us. Let's not remain in the old antiquated ruts, refusing to open our eyes to the modern conditions that are rapidly unfolding themselves before us. Let's get in step and move forward in order that our organization may be progressive, that we may meet the contingencies when they arrive, and move forward with modern progress and modern civilization and the modern demands of an informed public.

(Applause)

VOICE: Question.

MR. GARNETT: Are we who are opposed to these new rules to have an even division of time with Judge Venable?

THE CHAIR: If the motion is carried there will be no further discussion. The motion is that the consideration of the federal rules be indefinitely postponed.

MR. GARNETT: Then Judge Venable will have the full time?

MR. BELK: The motion is that the consideration of the adoption of the federal rules by this convention be now indefinitely postponed.

VOICE: Second the motion. I move the previous question.

MR. ENGLE: Don't you think, in order that we may be properly informed, it would be well for the gentlemen who moved that the consideration of the federal rules be indefinitely postponed, read them to us?

VOICE: The previous question has been called.

THE CHAIR: The previous question has been called. All in favor of the motion will say "aye", contrary "no", the ayes have it.

HON. GERARD BRANDON: I now move that Judge Venable be invited to address this convention upon any subject he thinks material and helpful to the bar and to the state of Mississippi.

HON. W. W. VENABLE: I suggest that it is lunch time. I think the association will derive more benefit from their lunch than they will by hearing me.

THE CHAIR: I want you to come up here, Judge Venable. The greatest test of courage is to be defeated and fight again.

JUDGE VENABLE: I am not defeated. (Applause)

All right, gentlemen, you asked for it.

THE CHAIR: Judge Webb Venable of Clarksdale.

JUDGE VENABLE: My friends, my name appears upon this program because the commissioners of the state bar appointed me to discuss a report of a committee. In view of the apparent opposition to hearing me discuss it, with any degree of effectiveness at least, I am probably due you this explanation.

I have practiced law in Mississippi for some years. It has been my good fortune to have had a varied experience. I am not now as young as I once was. For some years as a prosecuting attorney, for some time as a judge, it so happens that I have been interested in the courts of Mississippi. I have had a real affection for my brother lawyers, and I hope that you will believe me when I say that I have only the desire to promote the efficiency of the courts and the prosperity of my professional brethren.

During these years I have matured certain ideas growing out of my observations and what I was able to learn by the study of the procedure in the courts that have earned reputation for efficiency and for the maximum of service to the public.

As I have grown older the thought has impressed itself upon me more and more that to the lawyer is committed the operation of the judicial department of the government. We hear much about patriotism. We hear lawyers praising the bar and the service of the lawyer, but the fact remains that the people of Mississippi get only that kind of justice which the bar of Mississippi gives them. To the lawyer is committed the operation of the judicial department, one of the great departments of government.

Now, certainly, if there is laid upon us the responsibility of operating the judicial department of government for the benefit of every man, woman and child in Mississippi, such a condition cannot exist without having imposed upon us the ethical and patriotic duty of making the instrumentalities for the ascertainment of truth in judicial procedure as inexpensive and as expedient and as certain in its results as is possible.

I had some ideas. I wanted an organization; to have a unified state bar, with an official status in the life of the people of Mississippi, with certain duties to perform and certain obligations openly recognized and assumed. I wanted lawyers in Mississippi openly and frankly to take upon themselves the full responsibility for the efficiency of the courts of the state and the kind of justice which the people of the state received. I visualized an organized state bar as a body of patriotic, earnest, ethically minded men who would devote their talents to the constant study of how the administration of justice could be improved in Mississippi.

Eight long years have gone by, and if there is anything constructive that has come out of this body I do not know what it is. Every proposal is met with immediate opposition, not only to the adoption of the concrete thing, but even to its consideration. The program has been to keep things just as they are without investigation and study, and I have been disappointed and seriously disappointed in the spirit with which we approach these questions.

You asked for this speech and I am telling you frankly how I feel, hoping that it will do some good.

It has been my observation and is my conviction that the courts of Mississippi spend half their time taking proof about facts about which there is no earthly dispute between the parties. That is due to the existence of the general issue plea on the law side and the general issue in equity. Under our statute which permits answer under oath to be waived, the usual practice is to turn the answer into a general issue plea, and deny everything that is alleged in the bill from the address to the prayer. That is not original equity pleading. Originally a man had to answer under conscience and the requirement was that the litigants should be as truthful and as frank in their pleadings as they are on the witness stand under oath. That is nothing new, and certainly is sound morality.

We have expensive records going to the supreme court, filled with documentary evidence, about which there is no dispute, either as to the existence of the document or its verbage, at ten cents a hundred words, amounting to hundreds of dollars, when the actual issue could be tried for only a few dollars. What has been the result? The result has been that you have had a practical revolt on the part of the business world against the courts. There is hardly a business organization of any size that does not have a compulsory arbitration provision for its members. There is a current phrase among business people that a poor compromise is better than a successful lawsuit. This is not right. The courthouse is the place for people to settle their disputes, and they would gladly go there if they could quickly get down to the facts in dispute, at little expense, with quick trial. Government runs away from the courts. They are constantly setting up tribunals of various kinds to determine facts and render decisions. This is the function of courts, yet the government has refused to use them for that purpose because of delays, expense, and technicalities that thwart the process.

I happen to be one of those—and I am sure you are—who believe that behind this universe in which we live there is a great Intelligence which created it; that Intelligence did not create a universe with any conflict between its economic and its ethical laws. That creator did not create a universe wherein men if they observed ethical laws were brought into conflict with economic principles, but, on the contrary, created so harmonious a system that a violation of ethical principles is a violation of economic ones. This applies to our Bar. I do not think that there is a single thing that would add more to the prosperity of the lawyer and increase the amount of business that comes over the lawyers' desks and finds its way into court; there is nothing that could so increase the volume of business and increase our prosperity than getting greater efficiency in the courts, with lost motion and useless expense eliminated. Litigants should be forced to admit the facts that are true and go to trial simply on those that are disputed. We should have pretrial discovery, investigation and authentication

of documents so as to eliminate from trial records the huge collection of records and documents about which there is no dispute either as to existence, authentication or legal effect.

This was my thought. With this in view I had another. I wanted the lawyers of Mississippi to attack this problem. I have not been an advocate of any particular system of rules, but I have been and am an advocate of those rules which we honestly find and believe to be best. I wanted the lawyers of Mississippi to do that work for themselves. I wanted them to engage upon that study and then bring to the benefit of the people of Mississippi the result of their work. You know the history of that movement, and my efforts to that end.

Now the same thing happens and is happening in the country. There is a demand that the courts become more efficient and lost motion be eliminated, and this manifests itself from the Supreme Court of the United States down to the lowest court.

During the time I was working with the State Bar, serving on a committee appointed by the State Bar to do the work, I had occasion to investigate somewhat the procedure and practice of various courts including the courts in England where courts are said to be very efficient. I want to say to you that there is not a single experimental rule in the federal rules as adopted and promulgated. Every rule in substance was already in existence in some jurisdiction and had been found to work well. These rules proceed upon the idea of omitting everything not disputed, getting down to the issue as to what the actual facts of the case are. I am not an advocate of the adoption at this time of the federal rules. With all due respect, I think that the position of my brethren should be taken into consideration. I think we ought to have time to study them. I think some of them will be found to be applicable to our conditions, some, maybe, not applicable.

I think in time we will recognize the value of uniformity. Why learn several systems of pleading when one will serve the purpose? Every lawyer who has the ambition to equip himself to safeguard his client's business has to learn the federal rules. He must familiarize himself with them. He must use them. They are here to stay. If they point the way to better conditions in our courts, I think it would be distinctly advantageous to the state, to adopt them as far as conditions permit.

Take the question of privilege, for instance. We do not wish to abolish the right of privilege—I do not think the bar of Mississippi does. That can be excepted. Take the question of charges to juries: that could be excepted. The point is many of the rules are good for us and should be adopted. I know the lawyers. I heard a distinguished friend of mine give a eulogy upon the common law system of pleading. He was correct in one aspect of his presentation. Of course there are certain things that are present in every system of pleading. One cannot get rid of these things. They are inherent

in the very laws of the mind and in the work that is to be done. For instance, here is a court that sits quiescent. It will not move until moved upon. It will not move until persuaded that movement is right. I, as attorney for the complainant have the task of stating to the court something that will appeal to it to put it in motion. What must I state? I must persuade the court that action in the premises is necessary. So what do I do? I file a declaration or bill in equity—and there is no difference in respect to what I am talking about—I first choose the principle of law that I think the court will agree is the governing rule. I do not write it out in my pleading but I could do so. That is the major premise, and then I state the facts in my case that bring me within that major premise, and then from my major and this minor premise I draw my conclusion, which is the relief I ask for, whether equitable relief or damages at law. In other words, every initial petition on behalf of the plaintiff must necessarily be a syllogism. This is just as true of a bill in equity as it is of a declaration at law. Of course, you cannot abolish this. When we come to defenses, by the same rules of logic, if we want to deny the major premise, we demur, or if we want to deny the application of the major premise to the minor premise—the minor premise comes within the major premise—we demur. In other words, this is the challenge of the legal principle that has been invoked, either that there is no such legal premise or else the legal principle does not cover the case. In other words, we do that whether we do it with a demurrer at law or demurrer to a bill in equity. Likewise, every plea or answer, whether in law or equity, must be an attack upon the major premise or minor premise or the conclusion. Of course, we cannot abolish this. This is inherent in any pleading. If we cannot change such essentials in pleading, the only change that can be made in the system is in the method by which it is done. In the last analysis, it is a question of method for doing the same thing.

The common law system of pleading has constantly undergone changes from its beginning. It has never remained static. Life changes and law changes with it because law is the outgrowth, not so much of logic as of life. Whenever you change the life of a people you change the laws of the people necessarily, and laws change to conform in kind. The common law has never been a static body of law. How many lawyers of Mississippi know what we are talking about when we say "giving color to a plea in abatement", "common traverse" and "general traverse". Stephens on Common Law Pleading condemns the general issue as a weakness. England, the mother of common law pleading, rid herself of it 75 years ago as not applicable to modern life, and certainly if there were a country that would retain it, England, with its conservative courts and lawyers, would. They operate under a system of simple rules very much like the federal rules, and by the way accomplish the same thing quickly and inexpensively. So we are not impious when we propose changes in pleadings. It has been

done, all down through the centuries, from generation to generation, and every other body of law in the world has been changing itself to meet changing conditions.

But I must hasten. Here is what I propose, I had a resolution but you gentlemen voted that you do not want to consider this matter in any form or fashion so I am not going to present it.

MR. JACOBSON: Read it please.

MR. VENABLE: Here is what I think we ought to do. This resolution provides that the legislature shall pass two acts: one for the law courts and one for the equity courts. It provides (reading)

"BE IT RESOLVED that upon the registration at any time hereafter with the secretary of the Mississippi State Bar of the requests of the majority of the active members of the Bar of the state of Mississippi, not including those who are delinquent in their dues to the State Bar, the then president of the State Bar shall transmit to and recommend to the legislature of the State of Mississippi the passage of the following act, to-wit:

Section 1. Be it enacted by the legislature of the State of Mississippi.

That upon the petition of the majority of the active members of the Bar of the State, not including those who are delinquent in their dues to the Mississippi State Bar, the Supreme Court shall draft, promulgate and publish general rules prescribing the forms, process, writs, pleadings, and motions, and the practice and procedure in trials at common law, which rules shall conform as closely as practically possible under the constitution of 1890 to the rules promulgated by the Supreme Court of the United States under the Act of Congress of June 19, 1934; together with such additional consistent rules as the court may deem necessary to adequately cover the procedure in trial law causes; provided, however, that the rules shall not include appellate practice or procedure, nor shall they abridge or enlarge or modify the substantive rights of any litigant, and said rules shall not change or alter the method of giving instructions to juries, nor change the law of privilege to the testimony of witnesses.

Section 2. The members of the State Bar may register their desires with respect to the adoption of such rules with the secretary of the Mississippi State Bar by personal request, or by letter, or petitions signed in the personal handwriting of the person who signs, and may at any time be filed with said secretary. When such a majority shall have registered its request for the promulgation of such rules as are herein provided for, the secretary of the Mississippi State Bar shall certify such fact to the Supreme Court, whereupon said court shall adjudicate that a majority of the members of the State Bar have so requested by an entry on its minutes and shall proceed to formulate and promulgate the rules so formu-

lated by spreading them on the minutes of the court within one year from that date. The rules shall go into effect six months after their adoption, and thereafter all laws in conflict therewith shall be of no further force or effect.

"Section 3. In the formulation of said rules the said court shall appoint an advisory committee to assist in said work, such committee to serve without pecuniary compensation. The court shall have the rules printed and distributed in such manner as shall be deemed most advantageous."

JUDGE VENABLE (continuing): Personally I think the will of the majority ought to control. If it is against me, all right. After study, if the lawyers of Mississippi think that we should not make any changes, you will never hear a word of criticism from me, but I don't think we should take either position until we know what we are doing, and I believe in a majority of the bar deciding the question. (Applause)

MR. REILY: Just one question. Under that motion, the idea is that all rules, except the rule dealing with instructions to juries and the rule abolishing the privileged communication statute—except for those two rules, that entire balance of the 86 rules shall be passed upon by the various lawyers and they shall send in their assent or dissent as to whether they favor those rules, 84 or 86.

MR. VENABLE: No, the bar does not pass on what rules shall be adopted. The bar passes on whether the Supreme Court shall promulgate a set of rules assisted by a committe from this bar. What rules they shall have will be passed upon by the Supreme Court with this committee. The committee from our association would be appointed, and the supreme court would work out a set of rules with them. You and I would not pass upon the individual rules.

MR. REILY: The committee would pass them to the supreme court without this body voting on them?

MR. VENABLE: Yes, I have heard that when an irresistible force meets an unsurmountable obstacle the result is compound stationary motion. We have had that 7 years, I think. I don't think this body would ever pass upon it. If this body undertook to debate and pass upon individual rules, we would have it seventy years more.

In conclusion, let me say that this is what appeals to me. We have some opposition, honest opposition. We have others in favor of reform, simplification of our rules, making them more efficient. They ought to be made to correspond as nearly as possible to the federal rules, if adopted, so we will not have to learn two systems; so that a lawyer will feel as at home in the federal court as in the state court.

This resolution leaves it to the majority. It would not go into effect at once. It will take some time for the lawyers to look into this question, study the federal rules and decide whether they want

to register or vote in favor of this resolution. In the meanwhile we have the opportunity to familiarize ourselves more perfectly with the rules and observe their actual workings, and by process of experimentation we can decide what rules are good and what rules we do not want, so that you and I, as we become familiar with the rules will have opportunity to observe their operation and have time to mature our judgment and have intelligent judgment as to whether or not we want them.

I do not mean anything unkind, but I doubt very much if a good many of us who have voted this morning have ever spent as much as an hour in honest, sincere study of these rules to find out what they are. I want us to stop this kind of thing. I want us to get down to honest work and honest decision so as to improve our courts and our procedure in the courts.

If I have hurt anyone's feelings, permit me to express regret. That has not been my purpose. I have for each and every one of you nothing but affectionate interest, and I can assure you that I am entirely disinterested in this matter. As far as I am personally concerned, it does not make an iota's bit of difference what rules you have. I do think there is work for every one of us. It is duty that is calling us and that call is imperative. I thank you.

(Applause)

THE CHAIR: Thank you, Judge Venable. That concludes the program for the morning. We will now adjourn until 9 o'clock tomorrow morning.

FRIDAY JUNE 23RD, 9 A. M.

PRESIDENT KELLY (in the chair): Is the Reverend E. A. DeMiller in the house? (no answer) I belive the members of the clergy are a little uneasy about mixing with the lawyers.

I am going to call on Dean Kimbrough. Will you invoke Divine blessing, please?

DEAN T. C. KIMBROUGH: We come to Thee, our heavenly Father, and thank Thee that we should be here this morning to attend the important work of the State Bar Association. May each one of us feel the importance of this work, that it means much to our state, to the people of the state. We thank Thee for all the blessings that have been showered upon us, and ask that Thy blessings may be extended to all assembled here. We ask it in Christ's name, Amen.

THE CHAIR: The first number on the program is a matter that went over from yesterday, and that is, Activities and Benefits Derived from District Bar Associations, Hon. J. D. Thames of Vicksburg.

HON. J. D. THAMES: Mr. President, Members of the State Bar, when I was invited to make this report I was fully instructed as to the time allowed, I was instructed that I must stay within a time limit of ten minutes. I shall do so.

In order to fully appreciate the activities of and benefits derived from District Bar Associations, it is necessary for us to keep in mind the fundamental reason for the existence of District Bar Associations.

It would be presumptuous on my part, and a transgression on your time and patience if I were to undertake to enumerate and discuss at this time the aims and purposes of the Mississippi State Bar Association; but I am constrained to remind you that wherever there is a right and privilege, there exists a corresponding obligation and duty. It is the right of every lawyer in Mississippi to be a member of this Association and his privilege to participate in its activities; but, likewise, it is his obligation to share the responsibilities of its organization and his duty to help plan its growth and development. Those illustrious leaders of our Bar, many of whom have gone on before us, dreaming of the future greatness of this Association and striving always to inculcate its aims and purposes in the minds and hearts of their fellow practitioners, conceived the idea of the creation of District Bar Associations, which would be part and parcel of and ancillary to this Association, thereby affording to each Judicial District a friendly forum for a frank and open discussion of its own particular and peculiar problems; and an opportunity to study and discuss the various and varied questions of a State-wide nature which are to be presented at the annual meeting of this Association.

The present administration has diligently and earnestly sought to promote and foster the organization and development of the District Associations. I am happy to be able to report to you that most of the Districts have perfected permanent organizations. They have elected their own officers, called their own meetings, appointed their own committees, made their own investigations, conducted their own study and discussion, and many of them have passed resolutions setting forth the conclusions which they have reached, with reference to particular questions. The principal topic of study and discussion at each of these District Meetings has been the question of Procedural Reforms in Mississippi and the advisability of the adoption of Rules similar to the new Rules governing Federal Practice and Procedure. The question of Procedural Reforms in Mississippi has, from year to year, grown in interest and importance, and today is one of the most vital questions confronting this Association, and is one which vitally affects every lawyer in every judiciary District in this State. Is it any wonder then that the interest and study of the District Associations has centered around this question? The important thing, insofar as this report is concerned, is not whether the various Districts have passed reso-

lutions endorsing or condemning these Reforms, but that they have made a study of the question and have passed some Resolutions on the subject. May we not be justified in saying that a part of the interest in this question manifested on the floor of this Association is due to the study and consideration given to it in these various District Meetings? The organization report and Resolutions of each of the Districts are now on file with the Secretary of this Association but are not incorporated in this report.

It is a well recognized principle that we get out of any organization just what we put into it; so it is with the State, District and Local Bar Associations. It would be tedious for me and boresome for you if I should undertake to enumerate the many hypothetical benefits and advantages to be derived from District Organizations. So, for the purpose of this report, I am going to briefly outline a few of the greatest obstacles in the way of the proper and expected functions of these organizations and offer a few practical suggestions which I feel will aid in their growth and development, and add to the manifold benefits to be derived therefrom.

It is no idle form or unmeaning ceremony for us to join our fellow lawyers, of our own and adjoining communities, around the banquet board to renew old acquaintances and to stimulate new friendships. Nothing could be pleasanter or more enjoyable than for us to lay aside the business and professional cares of our daily life and spend an evening enjoying the comradeship and association of those who speak our language, who are faced with similar difficulties, and whose outlook is tinted with the same color of professional interests. But, my friends, this is not enough to stimulate the growth of the District Associations and to justify their existence. These personal pleasures are not sufficient to instill in men's minds an insatiable desire for knowledge and information with which to solve the perplexing problems which are constantly arising in this changing world; and with which to aid the proper administration of justice so that each and every citizen of our land shall fully enjoy his inalienable right of Life, Liberty and pursuit of happiness. These meetings must be coordinated, the programs must have a definite purpose and objective, and the speakers must have a definite message and be fully prepared to lead a discussion of his subject.

Every available facility of this Association should be placed at the disposal of each District, and on special occasions, it should lend financial assistance by defraying the traveling expenses of guest speakers. The Law Journal could well afford to publish a resume of the activities in each District, and publish at length any article or speech delivered before any of the District Meetings of interest to the Bar generally. Each and every member of this Bar Association should be ready, willing and able at all times to serve, cheerfully and well, any of the Districts when called upon.

It is indeed a pleasure for me to be able to report that Districts No. 1, 2, 3, 4, 6, 9, 11, 14, 15, 17, have perfected their permanent organizations, and, for their accomplishments deserve the congratulations and praise of this, their parent association.

The time is not far distant when each and every member of the Mississippi State Bar will know and appreciate the real underlying meaning of the "Activities of and Benefits to be derived from District Bar Associations."

THE CHAIR: Thank you, Mr. Thames.

The next item is the report of the Junior Bar Section, led by Hon. John C. Satterfield of Jackson, chairman of the Junior Bar. He will make the report for the Junior Bar Section.

HON. JOHN C. SATTERFIELD: Mr. President, Ladies and Gentlemen of the Bar, Three years ago by action at Greenville, you formed the Junior Bar Section of the Mississippi State Bar, which is simply and purely a part of the Mississippi State Bar. The purpose, as stated on the floor at that time, was that we younger members who feel that we should defer to the senior judgment of the maturer members on matters before the association, might have an opportunity to do some work that might be of benefit to our profession, and we hope that the report which we will make today will show you that the members of the Junior Bar Section are indeed interested in the welfare of the profession and are willing to take of their time and what ability they may have to try to do something that is worthwhile for the profession in this state.

We have this year had several committees which have done splendid work. At the beginning of the year we sent out a letter to every member of the Junior Bar Section with several suggested activities, and requested that every member of the Junior Bar Section who knew of activities that we should carry on, so advise us, and we received a number of very good suggestions. In accordance with that, we appointed on the committees those who in response to the letters advised that they were interested in that work, and I wish now to thank the members of the committee and the chairmen of the committees and the members of the executive committee for their splendid work.

This year, as chairman, I was fortunate in having very little work to do myself, and all I had to do was to sit back and watch the boys work: they were so interested, and they left practically nothing for the chairman to do.

We have several items, I think, of interest to the profession, to the Junior Bar Section and the Mississippi State Bar. We will limit the presentation and make it just as short as possible, but after all this is the result of a year's work by our committees, and I know you will be willing to give us a patient hearing, and consideration of the recommendations that have been made by the Junior Bar Section.

One of the committees of the Junior Bar Sections had to do with the welcoming of the young lawyers into our profession, and extending to them sympathy and such help as was possible. This committee went to the University of Mississippi, saw all of the graduates and wrote personal letters to every one who passed the Bar examination, and has visited every one who received a degree from the University of Mississippi and who passed the Bar, welcoming them into our profession and making them feel that we are glad to have them, offering to help in every way possible; and also prepared some data that we believe of value to the University of Mississippi and others, and invited them to active participation in the Mississippi State Bar.

We had a committee, which was headed by Jimmie Ogden of Magnolia and sub-chairman Edwin White of Lexington: they are both to be congratulated upon the work they did.

A legislative committee headed by Billie Bacon of Durant did some splendid work and made some recommendations for a similar committee to be appointed if there are suggestions which are approved by this session, and in order to present to the legislature the suggestions which have been approved by the Junior Bar Section.

There was a committee headed by John Morgan Stevens of Jackson in connection with legislation, a drafting committee, to be composed of lawyers located near the Capitol, to aid in elimination of inaccuracies and conflicts in legislation that affected the professions as such. They have made a complete study of the matter and have made some fine recommendations that will be carried out next year.

One of the committees most active here was headed by George Ethridge of Meridian. I am not going to present the report that was made by them but it has done a magnificent piece of work—the committee in connection with the Bureau of Identification, Investigation and Statistics—a bureau for law enforcement in this state which is generally along the line of the federal bureau of investigation, not so much in connection with investigators but that portion of their work which is to aid law enforcement officers and agencies of the state and of the federal subdivisions. Of course, this would be limited to the state law enforcement officers. The report was printed in the April Law Journal, and outlines the suggestions of the committee. This bill was introduced at the last session of the legislature by George Ethridge. The bill was prepared by him and Honorable Walker Broach, district attorney at Meridian, and a full outline of the bill given in the Law Journal. A resolution was adopted by the Junior Bar Section endorsing this suggestion. I might state very shortly the general nature of the bill, because the resolution was adopted by us the other evening, asking that the Mississippi State Bar approve our action and recommending the adoption of this legislation.

The bureau would be controlled by a board of control consisting of the 17 district attorneys, the attorney-general and two law-enforcement officers to be appointed by the Governor one from the municipalities and one from the counties. There would be set up in this bureau a division on ballistics, expert finger printing, chemical analysis and one or two similar departments. There is nothing in the bill with reference to the size of the department or the amount of appropriation, which would be left to the legislature. It is based upon the uniform act which has been approved by various law-enforcement officers and various associations throughout the United States, and is so framed that it may be begun with a skeleton organization and increased as the result justifies.

We think it will be of great value to the counties and municipalities, and I therefore move the adoption of the following resolution, which I was requested to present by the Junior Bar Section:

WHEREAS, the Junior Bar Section, through a committee appointed by the chairman has made a thorough study of the proposed legislation for the establishing of a Bureau of Identification, Investigation, and Statistics for Mississippi, with the view of presenting it to the legislature for its consideration; and,

WHEREAS, the Junior Bar Section has accepted and approved the report of this committee and endorsed the proposed bill; and,

WHEREAS, the Junior Bar has continued its committee on this subject with the authority to present the proposed bill to the next session of the legislature; and,

WHEREAS, the State Bar Association at its last regular meeting at Vicksburg, Mississippi in 1938, by a proper motion, approved the proposed bill for a Bureau of Identification, Investigation, and Statistics as set forth by the Junior Bar Section; and,

WHEREAS, the State Bar should have a committee appointed to cooperate with the Junior Bar committee in this regard as has been recommended by the Junior Bar Section.

NOW, THEREFORE, be it resolved by the Mississippi State Bar Association assembled at its regular 1939 meeting in Biloxi, Mississippi:

That the actions of the Junior Bar Section are accepted and approved.

That the Junior Bar is commended for its splendid work in this regard.

That a committee be appointed by the President of the State Bar Association from its members to cooperate with the Bar committee in its endeavor to have the proposed bill on a Bureau of Identification, Investigation, and Statistics enacted into law and to assist in the presentation of same to the next meeting of the legislature.

MR. SATTERFIELD (continuing): I move the adoption by this Mississippi State Bar.

VOICE: Second.

THE CHAIR: You have heard the motion that the State Bar endorse the recommendation made to this State Bar by the Junior Bar Section, in so far as subjects discussed are concerned and that a committee be appointed. Is there any discussion.

MR. BUTLER: I dislike to be in the attitude of opposing anything that my good friends, the Junior Bar Section, advocate, especially after the exhaustive research and report that they have submitted, but I am just wondering if this Bar wants to ask the legislature to create some more boards and bureaus. I do not doubt but that it would be a good thing to have a Bureau of the kind and character suggested here by that report but we have too many boards and we have too many bureaus, not only in the state government but in the national government, and all these boards and bureaus cost money. Of course, it is a fine thing to have the laws of the country enforced, and it should be the patriotic duty of every citizen to see that they are enforced, and we should not shirk the responsibility. Now, let's not set up any more boards and bureaus; let's not be in the attitude of going to the legislature and recommending that any additional boards or any additional bureaus be set up in the commonwealth of Mississippi. (Applause)

THE CHAIR: Any further discussion?

JUDGE GRAHAM: I agree with the gentleman that we have enough boards but I think the importance of this board is such that we should have it and do without some of the boards we already have, rather than forego the benefits of this board.

I think one of the greatest burdens on our government now is the expense in connection with our criminal laws. The trouble with us now is that what is everybody's business is nobody's business. We elect sheriffs and chiefs of police, and we are all like the fellow who went to a hotel and told them that he would kill all the rats if they would give him free board and lodging. After he had been established in his room, he said: "Now, go bring me a block", and when they brought him a block, he said "Now bring me a chair". They brought him a chair, and when he got comfortably seated, he said "Now bring me a hammer" and they brought him a hammer. He said "Now bring me your rats". That has been the trouble with criminal law since I have been interested in it. The ones we have have felt that it was out of their line of duty, and they have told the citizenship to bring on the rats and they would kill them.

But this agency will be one they cannot dodge, and we won't have any such reports as we have had coming through the daily press in one of our northern states, an appalling thing to read in

the public press. This bureau of investigation will make those conditions impossible throughout this state, and I would say the cost of it is inconsiderable in comparison with other benefits involved.

It would be exceedingly unwise to forego this agency that will make for the betterment of this state throughout.

One reason why I feel so keenly about this thing is the fact that we have had in my district one of the hardest working, one of the most effective and one of the most conscientious district attorneys I have ever known in my life and he has recently resigned because he did not have the proper cooperation. He has had a salary that is insufficient to enable him to go throughout the district and make these necessary investigations, and the result is he made the best investigations he could, but it was insufficient, with the result that his prosecutions have been ineffective in a way, and seeing the hopelessness of the situation he resigned, and our district has lost one of the highest class young men in this state because of this lack of cooperation, and I say we cannot forego a serious consideration of this matter. (Applause)

MAJOR W. CALVIN WELLS: I am heartily in favor of this proposition these young men have brought in to us. I am afraid we older members of the bar are getting old-fogy, and that we do not keep up with the procession. Criminals have increased in numbers and in the ability to commit crime and get away with it, but law-abiding citizens sit down and maintain the old system of combatting crime and it is totally inadequate to cope with these criminal elements. I believe this bureau—yes, I too am tired of the multiplication of bureaus, George, but it does seem to me that this is one bureau on which we could spend money and save ten dollars for each dollar we spend on it.

You know a burned child dreads the fire. I had an automobile stolen last year that cost me $800 or $900. I telephoned the sheriff and the chief of police within five minutes after it was stolen and we did not get anywhere. I got it back a year later utterly wrecked, and as a result I lost about $700 or $800. Really I think we might spend some money in having a bureau to combat situations of which that is just an illustration. Cars are being stolen around over the state all the time. I had to go over to the Federal Court in Alabama and was told there that forty-two cars had been stolen in Mississippi by one thief alone, most of them in Jackson, the thief saying that it was such an easy place to get away from without detection. They take them to Alabama and Georgia, and take the wheels off of one, and put on another, change numbers, paint them up and get away with the racket. I talked to the United States attorney over there and he said, "Your state is an easy mark."

I think therefore that these young men of the Junior Bar Committee are presenting something very much worth while. I believe it will save the people of Mississippi ten dollars for every one they spend in putting this plan into operation. I hope this recommendation will be adopted. (Applause)

MR. REILY: Will Mr. Satterfield state just who shall compose this board?

MR. SATTERFIELD: The bill as proposed sets up a board of control composed of the district attorneys of the state headed by the attorney-general, and one sheriff and one municipal officer to be appointed by the governor. It will be in the hands of the chief law enforcement officers, the district attorneys and attorney-general of the state.

MR. REILY: Then there would be no expense incident to it other than the appointment of these sheriffs who would give their time to it?

MR. SATTERFIELD: There would be the expense in connection with finger printing and chemical analysis and similar expense of law enforcement, but no expense to the appointment of the board or the commission to carry out the general executive supervision of the work.

MR. REILY: Thank you for the information.

DEAN KIMBROUGH: Have you any figures of what it would cost to maintain the board?

MR. SATTERFIELD: It would depend upon the size of the staff which was employed. The bill is so written that that can be from a small staff and small expense to a very large staff and would be controlled by appropriations of the legislature. The bill is made flexible and does not provide for every fixed expenditure.

MR. ENGLE: I have listened with interest to the functions that this bureau might perform. I am of the opinion that the most important part of catching criminals is to stop crime before it is committed. I read an article by a district attorney in Texas, and he advocated the practice of going to the schools of the state and talking to the school children there along the lines that crime does not pay—not merely along the lines that it is wrong to do that, but along the lines that it is not good common sense to try to obtain something by crime, and that thus much criminality might be eliminated.

These district attorneys of this board could arrange for a series of talks throughout the state to the school children, bringing to the child the idea not that the criminal is a romantic figure to be emulated, but that crime is stupid and bringing out by illustration how the criminal eventually comes to the end of the row. This board when created—its functions could be enlarged and has large possibility for doing good.

When I first heard George Butler speak I was inclined to think with him of the cost. Probably fifty per cent of us will spend our lives working to support the other fifty per cent of the population, and, as General Butler said, we do not need any more bureaus, but this is something of which the expense will be comparatively negligible in proportion to its large possibilities. (Applause)

THE CHAIR: It may not be so bad if we do not have to establish another bureau to investigate the investigators.

All in favor of the motion will say "aye"; opposed "no", I guess the ayes have it; the ayes have it.

MR. SATTERFIELD: Another resolution adopted unanimously by the Junior Bar Section was a resolution in connection with the compilation of a new code for the state of Mississippi.

You, of course, are familiar with the supplement which has recently come out, that is somewhat larger than the old code and is somewhat of a mystery to find what you want. I believe the members of the Junior Bar Section have possibly found it difficult without as great ability as the older members, to dig through and find what is the law. We have felt that the time is here when a new code would be beneficial to the profession, and therefore a resolution to that effect was adopted by the Junior Bar Section to recommend to the legislature that they authorize the preparation and printing of a new code for this state. Therefore, Mr. President, in accordance with instructions of the Junior Bar Section I move that the Mississippi State Bar endorse the action of the Junior Bar Section, and request and memorialize the legislature of the state of Mississippi to appoint a committee to prepare, compile and publish a new code for the state of Mississippi.

THE CHAIR: You have heard the motion; is there a second?

VOICE: Second the motion.

THE CHAIR: Any discussion.

MR. ELLIS: Is that Code to be kept up to date all the time like the U. S. Code or just printed and turned loose? Any recommendation along that line?

MR. SATTERFIELD: No recommendations along that line. It is left to the legislature.

MR. ELLIS: Then I am for it.

THE CHAIR: This recommendation was made in letter sent by me to every member of the Bar some eight or nine months ago. I believe the present code, which is very cumbersome and expensive, could be materially reduced in size. If provision is made for a new code I hope a sufficient appropriation will be made to properly compensate the commissioners for the work that it will be necessary to do in order to make a thorough job. I am sure the members of the Bar will agree that the 1930 code could have been very materially reduced in size by combining in a single chapter subjects of similar nature. I might mention chapters on "Landlord and Tenant," "Ejectment" and "Unlawful Entry and Detainer," dealing in three chapters (code of 1930) mainly with manner of removing a party from property when unlawfully in possession thereof—three different chapters treating of substantially the same subject and

providing in each practically the same procedure. I hope if a new code commission is appointed it will undertake, by authority of the legislature, to prepare a code that will treat the subjects as concisely as possible and make it cheaper and of more service to attorneys.

VOICE: What time will the commission be ready to report to the legislature for the approval of its code?

THE CHAIR: It could not report until the legislature meets in January, and that legislature would create a code commission with instructions to report back at the 1942 session.

MR. SATTERFIELD: The suggestion is a good one. However, the resolution had in mind a recommendation and request without timing the suggestion—simply asks for action, and leaving the details of how it should be done to the discretion of the legislature.

VOICE: I want to express my earnest appreciation to the Junior Bar. We certainly need a new code. In 1942 our present code will be 12 years old, and this book at $25 a volume is worthless.

MR. STONE: I beg to disagree with the gentleman about being ravished by some publishing company. Yet that has already been done. You do not have to buy this $25 book, but I am going to disagree with him about it being cumbersome; it has the stuff in it but it is not the best kind of a book.

THE CHAIR: Because it is large?

MR. STONE: No, in spite of it. Anyway we had to buy that book; we had to buy the other supplement 8 years ago. We have never had a code in 9 years. Here we are nine years from the 1930 code. Talk about going through and eliminating chapters and all that, but that thing is done in a hurry, and this happened one time before: they had almost finished and left out one of the most important chapters in the whole book, and so I say it is not as easy to eliminate as might be thought.

Here in a single supplement you have all the annotations and decisions. I have yet to hear a member of the bar or the court say that it left out any changes made in the law since 1930. It incorporates the changes made between 1930 and 1932. I say for north Mississippi we think it is a mighty good book. We did not like to haul out the $25, but we have already done it and we are willing to get along, and as Mr. Butler said about the bureaus, after a while we will have to have a code commission every five years instead of nine, and then we will have the legislature meet every year so we can have a code commission.

JUDGE VENABLE: My personal experience has been that I have had no particular difficulty in the use of this recent supplement. It carries the same code section numbers as the two volumes

of the official code and in the same place of connection therewith. There is placed in the supplement all new matter that has been passed by the legislature and decisions since that time.

I anticipate that within the next few years we will have a great deal of legislation. We may have some revision. Now we have this matter of legislation since 1930 already codified. It may not be codified as well as possibly the code commission would do the work. However, it is in usable and workable shape.

There is one thing that we have to take into consideration: a new code will cost the lawyers of Mississippi—if all of them buy—between $60,000 and $70,000. I mean will cost them that personally. The code of 1930 cost $30.

VOICE: $37.50.

JUDGE VENABLE: This supplement contains almost as much material as the two volumes of the official code. A new code, in my opinion, would cost $50 or maybe more. Multiply that by the number of lawyers in Mississippi—I think around 1300—and you will get the figure that a new code will cost the bar individually aside from the indirect cost and expense of recodification.

We never have been very successful in having a code commission exercise any revisory powers. The legislature has been very jealous in the past of its right to legislate, and it has somewhat resented, according to my observation, the assumption by any code commission of the right to re-write any of the existing statutes. In the code of 1906 the code commission undertook to do that—a very distinguished code commission. If I remember correctly, the legislature rejected their work in toto, going through or perhaps section by section restoring the legislation to its original form and rejecting the recommendations practically entirely of the code commission. I do not think we are going to get anywhere very much in conferring on a code commission power to rewrite the law.

There is a reason for that. The legislature has a great deal to do. It is concerned with the economic problems of the state, questions of taxation, fiscal matters; it has not the time in a busy legislative session to go through and parse out the proposed recommendations of a code commission committee. Therefore, the member of the legislature is uncertain as to whether what the code commission proposed in the way of changes is good or bad; he is uncertain whether or not—if he give the matter study, and time—whether he would want the change or not; since he primarily is charged with the duty of legislating for the people, he settles the problem: 'since I do not know whether I approve of the change, if I had the time anyway,' and he settles the question by rejecting the recommendations and leaves the law as it was before the proposed change was made.

I do not think we could count as a practical proposition on a code commission getting anywhere in revising the law. In view of the fact that it is going to cost the lawyers $60,000 or $70,000—this is one item to be considered.

JUDGE J. MORGAN STEVENS: Mr. Chairman and fellow members of the bar, this is a subject to which I have given some thought. I heartily agree with my friend Venable that the legislature is jealous of its constitutional right to legislate. The code of 1930 is not the code proposed by the last code commission—not at all. The legislature tore that thing up from first to last. The ideal way, in my judgment, to have a code is to leave to the legislature its right to legislate, and negotiate with an upstanding publishing house to publish and edit and annotate the code and keep up supplements like the United States supplements. That is the ideal and modern way of placing on your desk an up-to-date, understandable and usable code. The Harrison Company may not be the company to do it, but certainly there are competent publishing houses who have staffs of technicians to do this thing and the job of annotating and publishing and arranging a code is a field in itself. You just can't rig up a committee of lawyers to do that as well as expert men who work for these publishing houses.

If we leave this matter as it is until the legislature of 1940 and arrange to have the legislature and the members of the bar contract with an upstanding publishing house to rewrite your code up to that date and agree to keep up the pocket supplements and to make the price within the reach of the poor lawyer, that is the ideal plan to work to. (Applause)

THE CHAIR: All in favor of the adoption of the recommendation of the Junior Bar Section will say "aye"; contrary "no". A division is called for. The "nos" seem to have it. All in favor of adopting the recommendation of the Junior Bar Section, which you have heard read and explained by Chairman Satterfield, will rise.

(A count showed 23 for).

All opposed will please rise. The "nos" have it.

MR. SATTERFIELD: In accordance with a resolution that was adopted by the Junior Bar Section at its last annual meeting, a committee of the Junior Bar Section was appointed to study the question of whether there should be a change made in the method of selection of the judiciary. That committee was divided in its action and report of the committee has appeared in the April issue of the Law Journal. I would like, however, to state to you the result of the committee's work.

The majority of the committee felt that no action should be asked for at this time: therefore, the committee report was simply received and filed by the Junior Bar Section and is not brought

before you with any request to consider the same or to approve the same, as the Junior Bar did not take any action with reference to the recommendations, but the committee ask that it be presented and not passed upon one way or the other. They ask that I inform you that the majority of the committee favor a change in the selection of the judiciary—method of selection. They favor the Wood plan, with which I am sure you are familiar. A strong minority think there should be no change, and I am merely reporting their request that no action be taken by the Bar Association upon the suggestion of the majority of the committee.

Perhaps one of the most important committees that functioned this year in the Junior Bar was the committee with reference to conflicts, omissions or proper changes in the present statutes. That committee was headed by Edmund Brunini of Vicksburg. They did some splendid work and spent a great deal of time in the preparation of their report. A copy of their report appeared in the April issue of the Law Journal, and a copy has been placed upon the chairs here this morning. It is a long report and contains some 12 or 13 items suggesting changes in the present laws, the removal of conflicts, and the correction of omissions. This report was presented to the Junior Bar Section at its meeting and was discussed at great length. Each item was gone into and each item was approved and recommended to the legislature by the Junior Bar Section, and offered to the Mississippi State Bar for consideration, with the hope that the recommendations would meet with your approval.

It is a long report; you have had an opportunity, of course, to read it and I am sure most of you have. It is a result of many weeks' work. I hope that during time that was allowed on this program—of which about 25 minutes remain—of the time allotted to the Junior Bar Section, that you will give a patient hearing to the presentation in short of these recommendations. The Chairman of the committee finds that he does not have time to read them all to you but he will give you a gist of the recommendations and present them for your consideration, your approval or disapproval, item by item.

There are a number of important suggestions I might mention before I turn the matter over to Mr. Edmund Brunini, chairman of the committee. One of them is how process can be obtained upon a non-resident partnership or individual doing business in this state through the construction of roads, buildings, etc., where personal process cannot be obtained or process which will authorize personal judgment may be obtained without the necessity of putting up a sequestration or attachment bond.

There are other matters of importance which will be covered by this report, and I now therefore ask Mr. Edmund Brunini of Vicksburg to present this matter to the Mississippi State Bar.

(Applause)

MR. EDMUND BRUNINI: Gentlemen of the Bar, I think Mr. Satterfield should have said some 12 or 14 instead of 12 or 13 —recommendations—it might start us off on the wrong foot.

These suggestions which we have made are suggestions that we hope to be presented to the legislature for proper action. They are not, we feel, in conflict with anybody's personal interest. They also are suggestions which do not go into any fundamental rights as we find it, and we ask that they be considered solely of help to the bar in its practice. They do not go into any economic matters.

The first suggestion was one made after finding from the various lawyers their reaction to it. In the supreme court rules there is a provision, as you know, that requires the filing of the original brief 12 days before the return day, appellee's brief 5 days before the return day and the rebutter brief on the return day. The sentiment of the bar appears to be that the rebutter brief should be in the hands of the appellee some little while prior to the day of argument, and it was with that in mind that the request is made of the supreme court that the rebuttal brief be required three days before the return day, which occasions the pushing forward of the other days 20, 12 and 3. I think at this time it will be in order for the president to call for an expression and vote on the part of the floor.

MR. SATTERFIELD: I move the adoption of item 1 of the committee's report.

MR. GARNETT: Second the motion.

THE CHAIR: You have heard the motion and second: is there any discussion? All in favor of the motion as seconded will say "aye"; opposed "no" and the motion has carried.

MR. BRUNINI: The next recommendation is that dealing with constructive service of process on non-resident motorists. The act of 1932 has never been revised or amended. You will find that it only provides for service where the automobile or truck is personally operated by the owner. That is a situation which should not prevail. Being a constructive notice statute, it is strictly construed, and courts of other states have held that it is confined to the individual who is driving. So we have broadened that statute to include services on agents or an employee duly authorized to operate the vehicle. In addition to that we have broadened slightly the use of the automobile so that in the event an accident occurs in the ditch or occurs in an area after having been used on the highway, process can still be obtained. Further, the act of 1932 has no provision whatsoever for venue. We have added to the statute a venue provision, which you will find in the last sentence on page 2, starting at the bottom of page 1, the venue as provided in the act as amended is in the county where the injury or damage occurred, or if in a joint action, then either in the county where the injury or damage occurred or in the county of the residence of the resident.

MR. ENGLE: Is this amendment broad enough to bring a non-resident partnership into court?

MR. BRUNINI: This would, of course, take in a partnership or corporation.

MR. BUTLER: May I ask a question?

THE CHAIR: Was this section adopted by the Junior Bar?

MR. BRUNINI: Yes.

MR. BUTLER: Do you think this statute as proposed is broad enough to permit you to sue the non-resident operator of the automobile when he is not the owner? For instance, John Satterfield in Memphis hires John Doe to drive his car into Mississippi. Someone is injured. Of course, you can get process upon the owner of the car in the way the statute permits, but does it give you the right to get process upon the operator of the car when the operator is not the owner, simply the driver?

MR. BRUNINI: I think so; that is our construction of it. Of course, I stand to be corrected.

MR. BUTLER: I thought the idea was to get the owner when operated by agent.

MR. ENGLE: How would you get a partnership in court?

MR. BRUNINI: I dont know whether you are confusing the suggestion or the reference by Mr. Satterfield. I think it would cover it. It has been held to give the court jurisdiction of a partnership or corporation or an individual operating by himself or through an agent or servant or employee.

THE CHAIR: Any further discussion on the motion to adopt this section of the recommendations?

VOICE: Question.

THE CHAIR: Is there a motion to adopt?

MR. SATTERFIELD: I move the adoption of item 2 of recommendations of the Junior Bar Section.

VOICE: Second.

THE CHAIR: All in favor of adoption of item 2 of the recommendations of the Junior Bar will say "aye"; opposed "no"; the "ayes" have it and item 2 is adopted.

MR. BRUNINI: The next item, No. 3, was one which was drawn with the idea in mind of a new code, those things which should be deleted therefrom which do not properly belong therein. For instance, a statute now in our Code provides that whenever an insurance company removed a case to the federal court that it should not thereafter be permitted to do business in the state of Mississippi. That statute has been held unconstitutional, and the recommendation here is that it simply be repealed.

MR. SATTERFIELD: I move the adoption of item 3 of the report.

VOICE: Second the motion.

THE CHAIR: All in favor will say "aye", contrary "no". I believe the motion is carried. I will so decide.

MR. BRUNINI: We now come to No. 4, and as that was voted down by the Bar association yesterday, we are not going to cause a controversy by bringing it up, so we will pass on to No. 5.

If you will recall there is no statute in our code which provides for an amendment to a declaration prior to the filing of an answer or prior to the return day of the circuit court. It was the consensus of opinion that a statute should be passed to permit that. We have in connection with No. 5 written up a statute similar to the one now prevailing in the chancery court providing that amendment can be made prior to the filing of any defense, without bringing the other party in even though process has been issued, but provided copy of the amendment has been furnished to all the defendants.

MR. SATTERFIELD: I move the adoption of item 5 of the report.

MR. JACOBSON: Second the motion.

THE CHAIR: All in favor of the adoption of item 5 of the report will say "aye", opposed "no" and the motion is carried.

MR. BRUNINI: There are two sections, 354 and 355 dealing with removal of disabilities of minors. There are several items we thought should be changed. An analysis of the decisions of our supreme court show numerous questions which have not as yet been passed on and which should be clarified by an amendment to the statute. For instance, it is not clear now as our supreme court has not expressly passed upon the question, whether if one parent is dead, it is necessary to join the sole surviving parent along with one of the next of kin or what. In addition to that the statute as it now reads provides that in the event the parents are dead, then two of the nearest kin should be joined. There is no decision of our supreme court construing the meaning of the word "nearest". It might be construed at some time to mean the two nearest of kin. That should be changed so as to read any two of the kin within the third degree, where neither of the parents are living. If either of the parents are living, the living parent must be joined as a party. In addition to that under the construction placed upon this statute by our supreme court, any one of those two of the nearest of kin might be a minor—certainly a rather absurd position removing the disability of one minor by joining another minor as the defendant.

Further than that section 355 as now written does not clearly show that there may be an *ex parte* petition by two of the parents then living or by one of the parents if the other be dead.

Those two statutes have been revised as you now see, and those are the points of revision which have been made.

MR. SATTERFIELD: I move the adoption of this item of the report, being item 6 of the report of the committee.

VOICE: Second the motion.

HON. WILLIAM ESTOPINAL: We are now in the day of divorce and custody of children in one of the divorced parents, and there is an anomalous situation existing after separation. I had occasion recently to petition our Chancery court to remove the minority disability of a minor whose father and mother had divorced, the mother was a very fine and noble woman, struggling with all her might to feed and clothe her child; the father a brute, mean low down character, not contributing one cent for this child. There was a small amount of money coming to this child from an accident it had experienced in which it was slightly hurt. The money was very badly needed by this mother. The father through meanness only, bucked the mother; refused to have this child emancipated, and we had to incur much more expense than if it had been possible to leave him out of the proceeding. It is cases of this sort that impel me to say that it should be possible to leave the recalcitrant parent out of a proceeding to qualify a child to receive that which is his own. In cases of this sort and I think while we are amending this section provisions should be made in such amendment to meet such situations.

VOICE: I would like to make a further amendment to that amendment. I am thinking of a case where the parents are not necessarily divorced but separated. For that reason I move to amend to add the word "separated".

THE CHAIR: You have heard the motion as amended.

MR. BUTLER: You know it is a pretty serious thing, even though a man and wife are separated, to emancipate the child without giving the father a voice. Now you can summons him into court under the present statute, and if you make the proper showing give him his day, and still emancipate his child.

MR. BRUNINI: We might tell the floor we have considered the two suggestions made, considered also the reasoning General Butler has outlined—this is a serious matter. We have thought that it is desirable to have both parents present, no matter whether that parent is antagonistic or not because such antagonism gets down to the truth of the matter, and with that idea in mind the committee rejected the two suggestions similar to the ones made from the floor.

THE CHAIR: Do you insist on the amendments?

VOICE: Yes.

MR. ENGLE: I move to table the amendments.

VOICE: Second.

THE CHAIR: All in favor of tabling the amendments will say "aye", opposed "no", the nos have it.

All in favor of the recommendation of the committee as read will say "aye", the contrary "no" and the motion is carried.

MR. BRUNINI: No. 7 is to be read in connection with No. 6. The legislature in 1938 passed a law providing for settlement when the amount involved is $300, or less. The act, however, does not provide who shall be made parties or in what manner the proceeding shall be instituted. It was the consensus of opinion that major settlements might be made for less than $300 when the claim might be worth $2,000, and settled for $255 in a very informal manner, so it was the consensus of opinion that an amendment should be made to the effect that the petition for the relief should be filed in the manner and with the parties prescribed for the removal of disabilities of minority. In that way, you would have a quick hearing with the *ex parte* proceeding, your responsory proceeding where necessary and all proper parties present.

MR. SATTERFIELD: I move the adoption of item 7 of the committee report.

VOICE: Second the motion.

CHAIR: All in favor of adoption will say "aye" contrary "no", the section is adopted.

MAJOR WELLS: There must have been a line or two in No. 7 left out. It does not make sense.

MR. BRUNINI: There is no change in the first and second paragraphs; it is probably incorrectly typed.

MAJOR WELLS: No. 7 as copied is an incomplete sentence; the copy is probably incorrectly typed, but if you find that your original is that way, suppose we grant unanimous consent that the gentleman clear up that item before it is printed.

THE CHAIR: We can direct the committee to clear it up before it is submitted to the legislature.

MR. BRUNINI: No. 8 has to do with section 323 of the code which provides for reduction of surety bond and provides for five days notice. No one seems to know what is the five days notice required. It is necessary to clarify that by "five days service of copy of said petition on the surety."

MR. SATTERFIELD: I move the adoption of item 8 of the report.

HON. A. S. BOZEMAN: I happen to know an executor who is handling a very large estate, thousands of dollars, and but for the objection of one of the devisees he would have no bond at all. He

cut it down to a very inadequate amount; and I want to call your attention to the fact that before the court should have the right to either cancel or reduce the bond of a receiver or executor or guardian, all the persons who would be adversely interested by such action should have some notice. That may be provided in some other section of the code, but the principal and the surety are both on the same side, both interested in its being reduced, and there should be notice to the parties who think that an adequate bond should be maintained before the court approve the right to either cancel or reduce the bond.

MR. BRUNINI: If you think the words "heirs and devisees" should be added, why, of course, that will be more than acceptable to the committee.

THE CHAIR: Mr. Bozeman will you move to authorize the committee to use appropriate words in presenting the matter to the legislature?

MR. BOZEMAN: I make that motion with reference to receivership—or possibly that would hardly cover. I think possibly some words that would cover those who are interested in maintaining the bond and who are adversely interested, should be added.

THE CHAIR: Will you authorize the committee to use appropriate language in this connection to meet your suggestion?

MR. BOZEMAN: I move to so amend.

THE CHAIR: All in favor of the recommendation as amended by Mr. Bozeman will say "aye"; contrary "no". The "ayes" have it and the recommendation is adopted.

MR. BRUNINI: No. 9 contains an omission from the State Highway Safety Patrol act, and states that the safety engineer shall specify dangerous curves and dangerous hills and at those points where it is dangerous to pass an automobile, that some character of line shall be painted, either by use of paint or by use of metal discs, etc. Those states in which this law is already in effect make it unlawful for any moving vehicle to pass over on to the left side of that designated line. We have drafted a statute to so provide for that. It has been slightly amended by the Junior Bar, that is the second section thereof, to read "It shall be unlawful to pass any moving vehicle and cross to the left side of said yellow line."

MR. SATTERFIELD: I move the adoption of item 9 of the report of the committee.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. If there is no discussion all in favor of the adoption of the recommendation of the committee contained in No. 9 as amended will say "aye"; contrary "no". Item 9 is adopted.

MR. BRUNINI: No. 10 is lengthy. We have two sections in our code at present providing that the slayer of a person shall not inherit or take his property, that is, of the murdered person. Mr. John Wade, Professor in the University of Mississippi Law School, prepared a model statute and a discussion thereof which was printed in one of the recent issues of the Harvard Law Review. It is a fine piece of work, and the committee has adopted his model statute, suiting it, of course, to our own needs.

MR. SATTERFIELD: I move the adoption of Item 10 of the report of the committee.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. If there is no discussion those in favor will say "aye"; opposed "no" and the recommendation is adopted almost unanimously.

MR. BRUNINI: You will recall the decision of our supreme court in the case of *Brashier v. O'Conner*. There should be a statute on our books that where a suit is brought in a court of wrong venue, the suit should be transferred on application, of course, to the court of proper venue. There must, of course, be jurisdiction. Judge Anderson of our supreme court wrote this particular amendment as it is now offered in recommendation No. 11.

MR. SATTERFIELD: I move the adoption of item No. 11 of the committee report.

VOICE: Second the motion.

THE CHAIR: All in favor of the adoption of item No. 11 of the committee report will say "aye"; contrary "no". The recommendation is adopted.

MR. BRUNINI: No. 12 does not give the full import of the opinion in the case of *Hays v. Federal Land Bank* where our supreme court held that there being no record or other evidence of the filing of a petition for the removal of disabilities of minority, the removal was void. It is the sense of the committee that the situation would arise in the examination of title to real estate, where the record evidence might not be there, where, however, the petition is marked filed and where if a final record was made, the final record being in the chancery clerk's office, the title could be passed.

With that in mind section 347 was revised so as to read:

> "The clerk shall, within three months after the final termination of each suit involving real estate, record all the pleadings, proofs, exhibits and proceedings therein, or such part thereof as may be required by order of the chancellor, in a book to be kept for that purpose, and to be styled 'The Book of Final Records in Chancery'. He shall likewise make a final record of all other proceedings or suits, if required by the decree or by order of the chancellor, omitting such portions from the record books as the chancellor may direct. The clerk

shall also make final record of all or such portions of a former terminated proceeding or suit as may be requested by any person, upon payment by such person of the cost thereof."

As Sec. 347 now reads there can be no final record of a terminated proceeding.

MR. SATTERFIELD: I move the adoption of item 12 of the committee's report.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. All in favor of the motion will say "aye", contrary "no" and the item, being No. 12 of the committee report, is adopted.

MR. BRUNINI: The supplemental report of the committee was not printed in the Bar Journal. The committee is trying to revise the chapter on corporations in our Code. We have not as yet completed our work, but there are several suggestions which we ask you to consider.

Section 4140 tries to provide for constructive service on foreign corporations but does not do so, in the opinion of the committee.

Section 4140 opens up with a paragraph on domestic corporations and contains therein a provision that if any domestic corporation, failing to designate an agent for service of process, the secretary of state shall be automatically the agent for service of process. The next paragraph deals with foreign corporations, and it is not clear that you can have constructive service of process on a non-resident foreign corporation where that foreign corporation does not designate some resident agent for the service of process. It does provide that they shall not be permitted to have access to our courts.

So with that in mind—I might say this further that nowhere in the chapter on corporations or in our code is there a provision that where constructive service of process is to be had upon the secretary of state as resident agent for a foreign corporation, the secretary of state shall give notice of the service of that process on him to that corporation. Every decision of the supreme court has held that unless there is adequate provision of law for the foreign corporation to receive notice by mail or in some such similar manner from the secretary of state, that such act immediately becomes unconstitutional. No one has as yet raised the point in Mississippi, but at some time we certainly will have some litigation over the section, and it will be nullified by our supreme court or the United States Supreme court.

With that in mind we have arranged for notice to be mailed by the secretary of state to the foreign corporation, and should a foreign corporation fail to designate a resident agent for service of process, the secretary thereby becomes its agent for service of process.

MR. SATTERFIELD: Mr. President, I move the adoption of the first page of the supplemental report of the committee, and the first paragraph on page two of said supplemental report.

VOICE: Second the motion.

THE CHAIR: All in favor of the motion to adopt page 1 and first paragraph on the second page of said supplemental report will say "aye", opposed "no" and the same is adopted.

MR. BRUNINI: The next division provides for a statute which would take care of constructive service of process on non-resident individuals and non-resident partnerships doing business in the state of Mississippi. We do not have any at the present time. Six states, Massachusetts, New Hampshire, Rhode Island, Vermont, and one or two others, have a similar statute to the one we recommend. Six other states have statutes which almost coincide with the one recommended.

There has been some question raised about the constitutionality of this statute. The decisions of the United States Supreme Court lead us to believe that it is thoroughly constitutional, so we have provided that (reading)

> "Every individual not an inhabitant of the state and every partnership composed of persons not such inhabitants, doing business in this state, or having a usual place of business in the state, temporarily or permanently, or engaged here, temporarily or permanently, in the construction, erection, alteration, maintenance or repair of a building, bridge, railroad, or structure of any kind or in the construction, maintenance or repair of roads and highways, shall before doing business in the state, appoint in writing some resident person or corporation or the secretary of state and his successors in office to be his or its true and lawful attorney upon whom all lawful processes against such individual or partnership may be served with like effect, as if served on such person or partnership in this state."

I want to call your attention to the fact that the Junior Bar Section amended this statute to provide therein specifically that the cause of action must arise in the state of Mississippi, which, of course, is essential to the act.

In addition to that we have provided for the notification of the non-resident individual or non-resident partnership in the same manner as set out in the non-resident Motor Vehicle Act. In other words, the secretary of state is the official person upon whom the process must be served, and it is incumbent upon the plaintiff to mail to the defendant a copy of the process served by him upon the secretary of state.

MR. BUTLER: Would there be any objection to including other forms of businesses beside partnerships? For instance, we have a good many common law trusts and associations which are not necessarily partnerships or individuals; would the same principle apply?

MR. BRUNINI: The same principle applies. I don't know but three expressions. "Individuals, partnership and corporations" used in statutes—of course, association, business or common law trusts could be added.

THE CHAIR: Suppose you authorize them to make the addition.

MR. BUTLER: I accept that.

MR. JAS. OGDEN: The statute covers the situation, that one is a resident of this state and one a non-resident.

MR. BRUNINI: No, it does not and I do not see how it could be done, Mr. Ogden—the party upon whom process should be had would be the resident.

MR. OGDEN: Suppose you have a party who cannot be reached?

MR. BRUNINI: You could get process on the other partner.

MR. DOTY: There should be a provision to take care of common law trusts in the same way you take care of corporations, because there are a great many common law trusts, especially in the oil business.

MR. FRED LOTTERHOS: One other point. I assume that it is intended to cover the case of an individual or a corporation that is either here in person on some part of the business or acting through an agent or employee. I believe it would strengthen the statute to let it read "doing business in this state in person or through employees or representatives", having in mind that a man who had never been in the state at all personally but had been acting only through agents might otherwise be held not subject to process. To make it clear it should cover the case of one dealing through others.

MR. DOTY: I believe it would weaken it.

MR. BRUNINI: I do not understand you clearly.

MR. LOTTERHOS: The change would make it clear that it applies to one who had done business but had never been within the state.

MR. BRUNINI: If he does business in the state.

MR. LOTTERHOS: It would hold him subject to process on the ground that he had done business though he had never been within the state.

MR. BRUNINI: The opinions of the various courts do not make it necessary that the individual be present in this state under this statute, but as long as he does business within the state, even if he makes a contract without coming into the state, he must have an agent for the service of process.

THE CHAIR: You have heard the recommendation of the committee and amended by Mr. Butler. All in favor of adoption will say "aye" contrary "no" and the recommendation is adopted.

MR. SATTERFIELD: I want to thank you for the hearing which you have given to this committee. I feel that I should extend to Mr. Brunini the thanks of the Junior Bar Section for the work he has done. In this connection I should like to report to the Mississippi State Bar that there was presented to the Junior Bar Section a resolution identical in words to that presented to the Mississippi State Bar with reference to the new federal rules, and the request that there should be set up an agency so that the majority of the lawyers might express themselves in this respect. These resolutions were presented at great length and argued and were adopted by the Junior Bar Section by a vote of 34 to 16. As this matter was already upon the program of the Mississippi State Bar, the Junior Bar Section did not request that this again be further presented to the State Bar, but I wanted to give you a report of the activities of the Junior Bar Section.

I want to thank you, Mr. President, and members of the Bar, for your very patient and courteous hearing, and assure you that the creation of the Junior Bar Section as a part of this bar has been accepted by us as a working assignment, and we hope that we will be able to render some small service to the profession. Thank you.
(Applause)

MR. ENGLE: Did your association consider the advisability of amending the privileged communication statute so that if a man should die, the personal representatives might waive that privilege and allow the doctors to testify?

MR. SATTERFIELD: That suggestion was made by myself and had not been presented to the committee theretofore, but if it is in order and there is no objection, I would like to move—that this Bar request that the legislature amend the privileged communication statute so that after the death of the party involved his administrator may waive the provisions of the statute. The reason for the necessity of this amendment is that the court has held that the right to waive this statute dies with the decedent, and certain cases have arisen in which there was no one who could waive the provisions of the statute. In those cases there was no way for the plaintiff to prove the cause of death of the parties and hence there was no recovery. I do not believe there will be any objection, and I respectfully make this motion for your consideration.

VOICE: Second the motion.

HON. P. W. ALLEN: Was the resolution in writing?

MR. SATTERFIELD: No.

MR. ALLEN: It should be in writing.

MR. SATTERFIELD: I do not think it is necessary to state the absolute provisions; that would be decided by the judiciary committee of the legislature. This is simply a request for action and I do not think it would be necessary to have it in writing—that is, the actual matter before us.

THE CHAIR: It has been moved and seconded that the recommendation as presented by Chairman Satterfield be adopted?

MR. HALL: I would like to be heard on that. I am against tampering with the privileged communication statute now. If this change is made and a man dies leaving a will and there is some contest over the will with reference to his mental capacity, there is a scramble as to who should be appointed administrator and thereby control the testimony of the doctor with reference to mental capacity of that man. If I correctly understand the amendment Mr. Satterfield has offered, I believe it would be a bad policy to tamper with our privileged communication statute, and I do not think we should take away any more of it than we have already taken away.

MR. SATTERFIELD: In view of the fact that our program has been very long and you have been very patient, if there is no objection, I would like to withdraw my motion at this time.

(Mr. Satterfield was given unanimous consent to withdraw his motion.)

THE CHAIR: On the part of myself and the Bar I want to extend the chairman of the Junior Bar Section and this committee the sincere thanks of the Bar for the excellent work done by the chairman and the committee and the presentation made to this Bar. (Applause)

MR. DENT: Before we proceed any further, I would like to suggest something: We had a very sensible discussion in the Junior Bar—and I see no reason why there should not be a very sensible discussion in the Senior Bar, with reference to the federal rules. I think they should be talked about and discussed at length, and I think before we get any further along, lets talk about the federal rules and discuss them, the rules that we hear so much about.

THE CHAIR: If you will pardon me, that has been indefinitely postponed. We want to get to the principal speaker. He is in waiting, but we are going to pause for just a few moments for a brief talk by a young lady. I have great pleasure in presenting Miss Catherine McFarlane, Field Consulate Children's division, Department of Public Welfare. I recommend her especially for her beauty.

MISS McFARLANE: [Miss McFarlane addressed the convention at length on the subject of child welfare and the child welfare service program of the state department of Public Welfare in Mississippi since June of 1938.]

THE CHAIR: Suffer little children and beautiful women to come unto us.

It was stated yesterday that next to the influence of the attorneys of the state was the influence of the press. We are indeed fortunate this morning to have the executive editor of the Memphis Commercial Appeal—or might I say the Mississippi Commercial Appeal—to address us. I will ask Senator Culkin to present the speaker.

(Mr. Culkin introduced the next speaker.)

HON. FRANK R. AHLGREN:

The Lawyer, The People and The Press

I am sure there are those among you here today who believe the proper title for my talk should be "The Lawyer and the People *versus* the Press", whereas I am sure I could elicit a dissenting opinion from amongst my colleagues that this bill of particulars should be styled "The Lawyer *versus* the People and the Press."

As a matter of fact, if there is to be any logic or philosophy in these remarks of mine, I hope it sums up to the premise that because of the inherent, communal interests of the lawyer and the press, the people of this great nation of ours will continue to be aided and abetted in their aims to thrive and progress under the mantle of democracy.

I hope I am not guilty of overstatement when I say that both of us—lawyers and newspapermen, have come in for our share of criticism these last few years. I am indebted to Walter Armstrong, a past president of the Bar Association of Tennessee and prominently identified with the affairs of the American Bar Association for some research along this line as revealed in his farewell address to the Tennessee Bar, to wit:

"It will not do to take the view that we have been kicked so often that we are no longer enough interested to look around to see who is kicking us. The increasing force of the blows may become dangerous. It may be necessary to prepare for self defense.

"There is one curious and interesting thing about the criticism of lawyers. It is criticism of the profession which may be easily contrasted with the trust reposed in the individual.

"A sizable anthology could be compiled of invectives against lawyers. Perhaps it would begin with the New Testament, (Luke 11:46): " 'And He said, Woe unto you also, ye lawyers, for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.'

"A fitting end, in modern free verse, would be Carl Sandburg's questions:

" 'Why is there always a secret singing
When a lawyer cashes in?
Why does a hearse horse snicker
Hauling a lawyer away?'

"Certainly it would include Shakespeare, (Hamlet, Act V, Scene 1): 'Why may that not be the skull of a lawyer? Where be his quiddets now, his quillets, his tenures and his tricks?'

"Coleridge would qualify:
" 'He saw a lawyer killing a viper
On a dunghill hard by his own stable,
And the Devil smiled for it put him in mind
Of Cain and his brother Abel.'

"And no Gilbert and Sullivan fan would, for the fraction of a moment, excuse the omission of the lilting lines of the lyricist who was himself a barrister:

" 'And whether you're an honest man or whether you're a thief
Depends on whose solicitor has given me my brief.'

"Yet through all these years clients have trusted us as individuals. Under the bond of professional secrecy they have confessed to us their pecadillos and sometimes their sins. They have made us executors of their wills and trustees of their estates. They have sought and followed our advice in the most intimate of relationships. They have committted to our keeping their property, their lives, and their sacred honor.

"Whatever may have been their expressions as to lawyers as a class, by their acts we have known that their feeling for their lawyer was different.

"Rarely have we abused our trust. Our sin, when we have sinned, has been other. We have had the defect of our qualities. We have sometimes been overzealous in urging our client's cause. But after all, an excess of loyalty rates low in the calendar of mortal sins.

"True, we have often fought as mercenaries, under one flag today and another tomorrow—like the gay and debonair youths of Dumas, with nothing to gain but the fee, and nothing to inspire us but the zest of the fight. But sometimes we have worn the helmet of Navarre and fought for free speech, for freedom of the press, for constitutional rights and for human liberty. We have had some Jeffreys within our ranks, but we have had many more Erskines.

"What I have said is true of the lawyer in all English speaking countries.

"I sometimes think that this criticism of lawyers as a class and trust in them as individuals is explicable on the ground that they have often in line of duty stood fast against the mob, and as a result have felt the vengeance of the mob.

"In this country—more than in any other—the influence of the lawyer has extended far beyond the circle of his personal clients. He has set the tone and dominated the trend of public affairs. We remember with some degree of complacency that of fifty-five members of the Constitutional Convention, thirty-three were lawyers, that of thirty-one Presidents, twenty-two have been lawyers. Illustrations could be multiplied.

"It would be an interesting study to explore the reasons for the preponderating influence of lawyers upon American public life.

"In the beginning this was not so. The colonials were not fond of lawyers. The early New Englanders frequently thanked the austere God they worshipped that there were none, or at most, only a few lawyers among them.

"The Augustan Age began when Washington called to order the Constitutional Convention and ended when Beauregard gave the order to fire on Fort Sumter.

"It was during this period that lawyers wrote the Constitution and enacted the laws it authorized. Then it was that Webster and Calhoun expounded the Constitution and Marshall and Taney interpreted it.

"Perhaps these facts fairly explain the great influence of lawyers during those decades. A written document, formulated by lawyers, was the foundation of our national life. It was new and little understood. The views of lawyers were naturally deferred to.

"Moreover, with the exception of ministers, the lawyers comprised the one educated class.

"Then came the War Between the States which was the product of men's emotion and not of their reason.

"Beginning with the day that Lee and Grant rode away from Appomatox, another nation began to take shape. The old agrarian South was submerged. A new industrial North was beginning to emerge. In public affairs ex-soldiers were center stage. On them the spotlight fell.

"Most of the lawyers who had the chance swam with the mounting tide of the new industrial era. Absorbed in professional duties and engagements, without regret, they gradually began to leave public affairs to others. The old days were passing. No longer did the leading lawyers in metropolitan cities merely try a few cases for individual clients and devote a large portion of their time to public affairs. Instead they became counsel for, and directors in the Brobdingnagian corporations, which were rapidly springing into existence. Forensic ability was discounted and business acumen was at a premium. The courts and the public came to know the leaders of the Bar less and less.

"This change in the function of the Bar, of course, did not occur in the smaller towns of the North. It was much less true in the South where a war-devastated section was rebuilding itself.

"So far, however, as the effect on public opinion was concerned, the change might as well have been nationally uniform. The daily newspapers in the large cities and the magazines of wide circulation discerned the trend, explained it, accentuated it and the public accepted it as an accomplished fact.

"Thus in the minds of the public the more prominent lawyers came to be more and more identified with large business enterprises and less and less with public affairs.

"With the growth of industry and the rise of an articulate working class, inevitable clashes of opinion occurred. With the spread of education spokesmen other than lawyers began to appear. Pressure groups formed, with deeply desired, if not always well defined objectives.

"In many instances the lawyers were not in sympathy with the changes that were sought. Their habit of mind made them feel that the law should broaden slowly down from precedent to precedent rather than be reversed overnight by Congress or the state legislatures.

"The result was a growing impatience with lawyers as being engaged in a futile logomachy on behalf of private interests, clinging to the old and being unwilling to accept the new.

"The result is that, though the Bar is approaching its zenith in education, training, skill and ethics, it is nearing its nadir in public influence.

"This being the situation, what have we done, what are we doing, and what shall we do about it? In the direction of retaining the confidence of our clients and the public in us as private practitioners we have done quite a bit. The newspapers have had much to say of the small minority who in the largest cities are mouthpieces of the underworld and accomplices of racketeers. An honest and measurably successful effort has been made to rid the profession of these undesirables. The drives in Philadelphia and New York have been notable.

"In the smaller cities, the evil is less acute. But in them, too, there is work to be done, even if different in character. And it is being done by the local bar associations conscientiously and effectively. One need not go outside of Memphis for an example.

"So far not much has been accomplished in the rural counties of the less populous states. In such counties there are usually no bar associations, the bar is small and all members intimately acquainted with one another. It is difficult to find one individual lawyer who will proceed against another. The only remedy seems to be regional bar associations or a strong state association—immune to local influences—and equipped to handle local grievances.

"I sometimes wonder whether the public realized just how unselfish and patriotic this work of the lawyers is. At their own expense and directly contrary to their own selfish interests, they are laboring in season and out of season to make the law fairer and less expensive for those who are compelled to resort to it."

And what of the newspaper?

I hope I am not being pedantic when I attempt to define a newspaper—or rather, give you the definition that someone on The Chicago Tribune has written and which, in my judgment, is a concise summary of what a newspaper should be, namely—

"The newspaper is an institution developed by modern civilization to present the news of the day, to foster commerce and industry, to inform and lead public opinion, and to furnish that check upon government which no constitution has ever been able to provide."

To this I would add, "and to seek to do the greatest good for the greatest number of the persons it serves, being not unmindful that it often must support the opinions of unpopular minorities, whether they be conservative or liberal as viewed in the light of immediate trends of thought, so that ultimate progress may result".

I am indebted to Cranston Williams of the Southern Newspaper Publishers Association for the following statement of the daily newspaper publishing business:

"Publication of a daily newspaper involves a number of operations which combine one or more things engaging the average business concern. The publisher is a manufacturer, for he takes raw materials and turns out a new product. The publisher is in the wholesale business, for in the national advertising field he deals largely through agents, and in the circulation department most of the distribution is through little merchants who carry the routes and agents in cities outside the place of publication. There is comparatively little direct selling of newspapers, this being restricted to a few copies in the office of publication and some subscriptions by mail to individuals. The publisher is in a sales agent business, for he seeks through his services to bring customers, clients and patients to do business with the people who advertise. In the case of local and classified advertising, the entire volume is sold direct to the advertiser by the publisher. In many respects the publisher is in the retail business, for he sells a portion of his circulation output to individuals. The publisher is a part of a profession which Edmund Burke was pleased to call 'The Fourth Estate'."

We in the newspaper business expect frequently to receive expressions of disagreement with our editorial attitudes and treatment of news developments. Sometimes it is but a mild criticism, at others, particularly when what we call politics is involved, it is quite bitter.

The complexities of our lives—the beliefs and practices we have come to regard as part of our lives—are not easily dislodged. And so when political or economic developments occur that may call for a change or revision of these beliefs, they frequently are unpopular, although in the long run they may be the best for the greatest number in our community, state or nation.

Progress is change, and it is the job of the editor to weigh the changes, to anticipate developments and to assay them. If, in his judgment, they are for the betterment of us all, all things considered, he must, in sincerity, advocate them.

Please do not get the idea that I am saying the editor or newspaper must embrace every so-called reform that comes along. Quite often he must cry out against some projected policy that in his estimation will not conform to our democratic ideals, or which he believes would amount to special privilege for a few. On the other hand, it might be an attempt to wrest executive powers from competent hands and render administration ineffective that he protests against.

As a friend of mine once wrote, "It is not at all important to an editor that people agree with him. It *is* important that he and they respect the opinions of each other and recognize the integrity of the convictions from which they spring. On that basis, compromise and agreements can be reached. Decent understanding of each other and reasonable compromise is the most that can be hoped for, and the ideal of any democratic community".

Because it has been used so much lately, familiarity causes us to gloss over the real significance of the phrase "freedom of the press". More than any other, this institution of the free press has fostered and preserved the true concept of democracy.

Consider that in the realm of ruthless dictatorships abroad, the first act of the despot has been to suppress the newspapers. Today, only in this great nation, in the British Empire and the Scandinavian countries exists the democratic principle of free speech, which is to say, a free press.

Advertising and circulation revenue have made it possible to provide in increasing numbers the newspapers that are dedicated to the service of their respective communities, their state and nation.

The fact that newspapers do look for their material sustenance in the business office which handles the advertising and circulation revenues has provided critics of the press with something from which to draw innuendos. As some of you perhaps recall, in November 1938, on the occasion of the St. Louis Post-Dispatch's sixtieth birthday, President Roosevelt wrote a letter to the publisher in which he said:

"I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room, and I wish we could have a national symposium on that question, particularly in its relation to the freedom of the press. How many bogies are conjured up by that greatly overworked phrase!"

Well, the Post-Dispatch thought such a symposium might be a pretty good idea, too. A pamphlet was prepared quoting from each of the 74 editors or writers who contributed to it. I hope that those who have already seen it will forgive me if I read a few excerpts that seemed particularly good and which, in my estimation, give a fairly good cross-section of editorial thinking.

The first is from George B. Parker, editor-in-chief of the Scripps-Howard newspapers. Mr. Parker wrote:

"The conventional thing for an editor to say would be, 'no, a newspaper cannot properly be edited from the counting room—and I'm going to prove my virtue, no matter what the cost.'

"But I have a feeling that if Joseph Pulitzer, or E. W. Scripps, or any of the great journalistic founders had been completely lacking in business sense we wouldn't know about them now. For number one of the requisites of effective journalism—or anything else that lasts—is self-support. Without that you have no audience. You are through. Nothing is so silent as a newspaper that is closed up. And since none less than Franklin D. Roosevelt posed the question, I feel free to carry the point over into politics. How would he get along if there were no counting room in the Democratic party?

"It seems to me that there is a lot of pretense about the Ivory Tower editorial idea—about the fellow who, to show his journalistic purity, goes out of his way to make things tough for the business manager.

"If he is an editor, he will edit. He wont let the counting room direct the paper. But neither will he sneer at the problems of the fellow who gets the revenue on which the editor operates.

"He will be sympathetic to those problems up to the point where they conflict with what Mr. Roosevelt calls the interests of the general public. When, and if, that conflict occurs, he will, if necessary, kick the business manager downstairs. But any inference on the part of the editor that it is up to him to demonstrate that he is holier than thou, that therefore he should set out to prove that the car can run without gas, regardless of whether the public interest is involved—that is fourflushing."

Arthur Krock, head of the Washington Bureau of The New York Times, said:

"The President will not find any true newspaperman to disagree with his statement about counting room editing. It still exists. It will never be honest journalism, and journalism will never fully

meet its public obligations until counting room editing disappears. The same thing may be said of those instances where proprietors who banish the counting room from editorial council as sternly as Mr. Roosevelt would, edit on the basis of personal viewpoints, prejudices and associations.

"So far as my experience goes, on The Courier-Journal under Henry Watterson, the interests of the counting room got no attention on the editorial page. On the World it had none in any part of the paper. On The New York Times this is the fact more completely than in any newspaper office where I have served. If the President, when he is vexed by the publication of news before he is ready for its publication, or by comment he dislikes, would not lump all newspapers in his critical opinion, perhaps there would be more and earlier incentive for those still dominated by the counting room and those still edited on a basis of personal prejudice to improve their standards."

Turning to the editor of one of the publications identified as liberal, we find Bruce Bliven, of The New Republic, writing:

"It is quite true that there is a fundamental conflict between a newspaper as an instrumentality of public service and a newspaper as a business enterprise devoted to earning private profit. President Roosevelt is correct when he says a newspaper must not be edited from the counting house, but this does not necessarily mean the counting house must be abolished, and certainly not unless we intend to change the whole basis of our civilization. To an amazing degree the quality of journalism depends upon the *esprit de corps* of journalists, as is evidenced by the difference between the best American papers and the worst ones, both published under the same system of private enterprise."

John W. Owens, editor-in-chief of the Sunpapers, Baltimore, sums it up as follows:

"Thank you very much for your invitation to participate in the symposium suggested by President Roosevelt on counting room control of editorial policy. However, I am afraid I cannot do more than to recall President Coolidge's summary of his pastor's sermon on sin. Mr. Coolidge said the minister was against it. Of the extent of the evil in business office control of editorial policy, I am unable to speak. It is one form of sin with which I have had no experience. I take it for granted that there are some newspapers which are abler and stronger than others. I have observed that some lawyers and physicians and ministers are abler and stronger than others. Indeed, I have observed this to be true of noted politicians."

Perhaps I should apologize for belaboring the overworked phrase, but there *is* a definite challenge to freedom of the press in the nation today, just as there has been every day to a greater or lesser degree since inclusion of the Bill of Rights in the Constitution of these United States was ratified. Today its freedom is

challenged by pressure groups, by business and government propaganda, and as we become increasingly free, the task of *remaining* so becomes just that much more difficult. I believe all will agree by comparison with publications of years gone by that the press of today has come far in the matter of independence. It is the job not only of the editor, but of everyone in the newspaper business to turn his efforts to preserving this freedom.

When I infer that newspapers of today are more independent, I am aware that in the minds of the older members present there comes a doubt. They remember, perhaps, the vivid stories of giants of journalism—the Greeleys, the Wattersons, and the Gradys—whose prolific pens were the dread of all who opposed them.

I am by no means seeking to draw a parallel between the editorial matadors of today and the fire-eaters of yesteryear. I ask only that you examine the old files, forgetting romantic affection for the past, and see how far we have come.

I am indebted to Frederick Murphy, editor of The Minneapolis Tribune for this story he told during a discussion of the power of the newspapers in the affairs of today as compared with the effectiveness of the publications generations past. He said he was reminded of a dialogue between two Englishmen in a London club. Said one sadly to the other:

"Punch isn't the paper it used to be."

"No", answered the other, "and it never was".

The newspaper of some three generations back was simply the house organ of a political party. It made no pretense of fairness or intellectual honesty. The success of the party justified the means to attain it. Everybody knew it. It was the standard of journalism of those times.

I believe you will agree that by the standards of journalism today all parties are given news coverage and even representation in the forum departments, no matter what the political views of the editor or publisher. Objectivity today is centered on presenting factually edited information and distributing it as quickly as possible.

Our reactions and philosophies are restricted to the editorial page, and political bias is confined there.

In recent years we have seen the radio and the motion picture making tremendous strides, in many ways doing part of the educational, and in a sense, recreational work of the newspaper.

I rely again on the words of a colleague who, in discussing this development, writes:

"I do not intend to minimize radio or the motion pictures as educational factors, but we cannot overlook the fact, either, that one has created and submitted to censorship and that the other is dependent on the government for license to operate.

"The daily newspaper remains the only free mirror in which we may view the world around us. Distort that mirror with the self-interest of the editor and his business friends and the picture will be grotesque and twisted. His political and social action will be proportionately distorted.

"The primary obligation of the editor to his community is to keep the mirror bright and clean. Unless this is done, democracy has a hard road to travel."

The growth of radio, motion pictures and kindred media of information and expression may well cause those of us in the newspaper business to consider the future.

Let me say that in my humble opinion there will always be in this democracy of ours an indispensable function for newspapers. The format may change; we certainly hope to improve mechanically and to keep a little ahead of reader requirements. Methods of distribution may be altered and editing, no doubt, will undergo a refining process.

All things considered, however, the men and women in newspaper business have nothing to fear except their own inabilities to adapt themselves, whether it be through awkwardness or lack of initiative. And, if you will excuse the obviousness, that applies to any career we undertake.

Newspapers are not just creatures of paper, ink, type, and presses. Competent minds of men and women to create them are as necessary today as they ever were; will be more necessary in the years to come.

For those who would imply that reader interest in newspapers is on the wane, I call attention to the fact the daily newspapers of this country have a circulation today of more than 42 million copies—the greatest ever. Only recently a survey by Time magazine showed a healthy growth in the newspapers serving smaller communities.

American enterprise is exemplified by American newspapers. We gain in strength in direct ratio to our abilities to recognize social, political and economic trends, to present them, to discuss them, and, where they are good, to advocate them, being ever mindful of the obligation of maintaining our heritage of a free press. The forthright newspaper editor recognizes the realities of the day and his responsibilities therein.

We seek no praise nor covet favor for our efforts to carry out that assignment.

I would like to quote the late Joseph Pulitzer. Said he:

"Our Republic and its press will rise and fall together. An able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular government is a sham and mockery."

So, we see both the Bar and the Press exhibiting an awareness of their problems and directing their energies toward a solution thereof.

There is another phase of our relationship I should like to discuss. In recent years there was evidence of public demand—prompted largely by the conduct of both press and lawyers in the trial of Bruno Hauptmann—for reform in the matter of publicity attending criminal cases.

At the suggestion of the Honorable Newton D. Baker, the American Bar Association selected a special committee to work with the American Newspaper Publishers Association and the American Society of Editors for the adoption of standards and proper limits of publicity for pending proceedings.

In net the group agreed that "the administration of justice should be without fear or favor; that while the rights of the press must be protected, the rights of the parties litigant must be also protected." As Giles J. Patterson, head of the American Bar Association committee said, "The mere fact that the committees, through mutual appreciation of the problems involved, have been able to agree, is in itself significant of the change in sentiment."

I agree that it is the duty of both professions to strengthen the judicial branch of our government by helping to eliminate those influences that have their origin in our respective professions that tend to prevent fair and impartial trials in our courts.

Quoting Mr. Patterson: "Judgments depend for their force and effectiveness upon acceptance of them and acquiescence in them by the public. Acceptance and acquiescence by the public in turn require that the people shall possess confidence in the honesty and integrity of the processes by which the administration of justice proceeds; upon the ability of the courts to give every litigant, poor or rich, weak or strong, a fair and impartial trial according to law in causes both civil and criminal. Confidence is an attitude of mind which once lost is hard to regain.

"If confidence of the people in the fairness of the decisions or judgments of the court be lost, their usefulness and effectiveness will be diminished, if not destroyed. In time, they may even come to be regarded as instruments of oppression.

"Cooperation between the organized press and the organized bar has heretofore been difficult to obtain. Doubtless this is in large measure due to the jealous regard which the press has shown for its freedom and to the resulting suspicion in the minds of some that if they should consent to limitation and control of publicity of court proceedings, such consent might furnish a foothold by which the courts might later seek to extend their control over the press.

"This jealousy of the press for its freedom is natural, for that freedom was obtained only by a long and bitter struggle against all forms of government control. It has been the hardest

of all individual liberties to attain and to maintain, largely because as Lord Erskine said: 'Its latitude cannot be promulgated in the abstract.' "

The press is not unmindful that largely because of the spirited cooperation of lawyers in the days when our Constitution was being promulgated that the Bill of Rights gave assurance of a free press. Patrick Henry, of Virginia, and others in the legal profession opposed ratification until such assurance was forthcoming. Henry said:

"If we must adopt a constitution ceding away such vast powers, express and implied, and so fraught with danger to the liberties of the people, it ought at least to be guarded by a bill of rights; in all free governments and in the estimation of all men attached to liberty there are certain rights inalienable—imprescriptable—and of so sacred a character that they cannot be guarded with too much caution. Among these are liberty of speech and of the press. Congress might think it necessary in order to carry into effect the given powers, to silence the clamor and censure of the people, and if they meditate views of lawless ambition, they certainly will think so; what then would become of the liberty of speech and of the press."

There is no real conflict between right thinking members of the press and those courts that seek to control publicity of pending cases through a sense of duty to give individual litigants a fair and impartial trial. On the other hand, there is an obligation and a responsibility on the press as a trustee for this freedom to present fair and honest information and comment on matters of public interest.

There is before the California Supreme Court at this time, I believe, a contempt case against The Los Angeles Times. Because of—in my judgment—its appropriateness in a discussion of this kind, I would like to quote from the brief filed by the American Newspaper Publishers Association as *amicus curiae*:

"Following a systematic survey of the editorials that had appeared in The Los Angeles Times over a period of approximately six months, J. Louis Elkins, as secretary of the Los Angeles Bar Association, on June 3rd, 1938, filed an affidavit in the court below alleging that the contents of five editorials published by The Times were calculated to interfere with and to influence the course of judicial administration in cases pending in the Superior Court of the State of California, in and for the County of Los Angeles, at the time of their publication.

"Following the filing of the affidavit The Los Angeles Times published two editorials, on June 5th, 1938 and on June 7th, 1938, defending the right of a newspaper under the Constitution of the United States to publish fair comment and criticism. Whereupon, on June 13th, 1938, said J. Louis Elkins filed another affidavit with the court below alleging these two editorials had an inherent ten-

dency and were intended to obstruct the course of justice. The causes were heard together. The court below adjudged the petitioners guilty of contempt!

"The constitutional provisions involved are Article I, Section 9 of the Constitution of California and the first and fourteenth amendments to the Constitution of the United States.

"The fundamental issue involved in this case and to which the discussion in this brief is limited is: 'Whether in view of the Constitutional guarantees against any form of previous restraint upon printed publications, a court has power to punish as contemptuous editorial statements which do not exceed the limits of fair and honest comment on matters of great public interest.'

"It is of primary importance that the right freely to comment on and criticize the action, opinions and judgments of courts and judges should be preserved inviolate; but it is also essential that courts and judges should not be impeded in the conduct of judicial business by publications having the direct tendency and effect of obstructing the enforcement of their orders and judgments, or of impairing the justice and impartiality of verdicts.

"Unless the summary power to punish contemptuous publications is exercised with utmost delicacy and caution, it may operate both as a previous restraint on publication and as a subsequent punishment for publications which are not detrimental to the public welfare. Both the Constitution of the State of California and the Constitution of the United States prohibit every conceivable form of abridgment of freedom of the press.

"The editorial in question does not attack the power of the courts to punish for contempt by publication but complains of the fact that the Bar Association Committee has constituted itself a public censor of the press. A newspaper has a broad scope of comment when it writes in defense of such attacks upon its function.

"If a newspaper is prohibited from using its columns to protect the general principles underlying an unfettered press in discussion of the peril arising from an attempt narrowly to define the area of legitimate editorial comment and criticism then it must be said that its freedom of expression is reduced to impotency.

"The analysis of all the editorials involved in the instant case conclusively shows an absence of features which have been usually present in cases where the courts have adjudged the publication in contempt. It is noteworthy that none of the editorials in controversy scandalizes the court. There is not a scintilla of language which can be construed as hostile criticism or that impeaches the integrity of the judge. There is no ascription of prejudice and subservience to the court, no imputation of improper motives or political bias. There is no false or inaccurate report of the court proceedings.

"Since editorials were written subsequent to the verdicts of the juries there was no attempt to influence the jury or intimidate witnesses. There was no publication in violation of a court order of secrecy. In brief, one could hardly imagine a case where the publications in question are so clearly and unmistakably free from elements which have been challenged by the courts as contemptuous.

"It is not without significance that most of the reported cases in the United States, where the courts have punished publications for contempt, were those in which the publications impugned the integrity of the judges. This fact alone eloquently attests to the deep-seated conviction held by the courts themselves, that punishment in cases where there is no scandalizing or hostile criticism of the judge as a judge or of the judicial system would offend the constitutional guarantees of a free press."

I am not unaware that the press as a whole has been criticized because some of its members have exploited tragedies of life. Nor can I deny that there is a suspicion among many persons that the exploitation had for its purpose the increasing of circulation and revenue. Moreover, I believe you will agree that within the bar there are those who by their conduct have violated the code of ethics, tending to discredit the administration of justice.

As Mr. Patterson said in his speech to the American Newspaper Publishers Association: "The bar cannot defend itself by joining in a chorus of condemnation of the press, nor can the press escape its responsibility by denouncing the bar."

While reviewing the powers of the English courts in controlling and suppressing publicity attending trials, the committee demonstrated it was concerned in outlining a pattern for cooperation the American way. Mr. Baker, in a letter, said: "Our recommendations must not look to a drastic and punitive discipline, but to the setting up of ideals and approximations to those ideals by the gradual elimination of the most offensive departures from them."

This was further emphasized by Mr. Patterson when he told the American Newspaper Publishers Association: "Our endeavor was to reach a solution of the problems in a truly American manner by agreeing upon standards of judicial procedure acceptable to the three interests. Reputable lawyers and reputable newspapers will abide by such an agreement and the courts will, with the moral support accorded them, effectively suppress the irresponsible violators."

Perhaps you are familiar with the conclusions of that committee, but I should like to repeat the recommendations for purposes of emphasis, namely:

"That local bar associations appoint continuing committees on press relations to function with corresponding committees representing the press and other means of publicity. So far as the legal

members of such committees are concerned, they should be carefully chosen from among the more thoughtful members of the bar, and they should be men of such professional dignity that responsible editors would be willing to discuss with them, currently and frankly, the difficulties presented by any particular trial during its progress."

Those conclusions brought from Mr. Patterson the comment that to some the program might appear inadequate, but it was not intended to be sensational or drastic. A complete reformation certainly could not be accomplished, but conversely it would prevent attempts to regulate the subject by legislation or by rules of the court that might cause further controversy between the bar and the press.

"We have drawn the design; let the local committes prepare the specifications and blueprints", said Mr. Patterson.

With these broad conclusions I can find no fault. True, there were some differences between newspaper representatives and the bar committee concerning specific conduct of both press and lawyers in trials and in the matter of use of cameras. But of the general recommendation for local cooperation between editor and bar committee, I am of the same mind as Mr. Patterson, who sums it up as follows:

"We have entered upon this joint enterprise conscious of the responsibility that rests upon us and with a serious intention to complete it. If this same spirit of cooperation be maintained, attempts of enthusiasts and those impatient of results to force the adoption of drastic rules will be avoided.

"Freedom of the press will be fully protected. Cases can and will be tried in accordance with standards of dignity and deportment that will assure to litigants a fair trial of their rights.

"Responsibility for fixing the proper limitations of publicity in particular instances will rest upon the local representatives of the bar and press. Mutual recrimination and controversy will cease. Mutual respect of the bar and press for each other and respect of the public for both, will be increased.

"Confidence in our courts will be restored; their dignity maintained, their rights better respected.

"The American government will then continue to fulfill the ambition and the purpose of its authors and the hope of every true American by rendering justice to all and at the same time preserving the liberties of all its citizens." (Applause)

THE CHAIR: I want to express the thanks of the Bar of Mississippi for the scholarly address delivered by the speaker of the day and to the publication which he so ably and so excellently represents. (Applause)

JUDGE J. MORGAN STEVENS: Mr. President, may I have the privilege of introducing a motion out of order?

THE CHAIR: I recognize Judge Stevens out of order. Read your resolution.

JUDGE STEVENS (reading):

"It having come to the attention of the Bar of the State that the professors in our Law School, in which the Bar is greatly interested, are very much underpaid; that they are being paid less salaries than any other State supported law school in the United States, and believing that those engaged in the training of the young men of the State for their work as lawyers and on the bench deserve pay commensurate with the dignity and importance of their work.

Now, therefore, be it resolved by the Mississippi Bar Association that a committee of not less than five members of the State Bar be appointed by the President, who will be and they are hereby authorized, as representatives of the Bar of the State, to take this matter up at once with the Chancellor of the University and with the Board of Trustees of the University and Colleges, and, if possible, work out a satisfactory solution of this problem, and, failing in this, they are hereby authorized and directed to bring the matter to the attention of the next Legislature, and that the Legislature be asked, if necessary, to make a separate appropriation for the Law School, which appropriation shall provide adequate pay for the law professors in discharging their duties in training the future lawyers and members of the judiciary of the State.

(Signed)

J. Morgan Stevens
Fred M. Belk
Hanun Gardner
David E. Crawley
Ed. C. Brewer
C. B. Roberts
Chas. F. Engle
Ben H. McFarland"

JUDGE STEVENS (Continuing): I could have gotten 100 signatures if I had circulated this resolution. I offer this resolution and hope I can get a second.

MR. DOTY: Second the motion to adopt.

THE CHAIR: All in favor of the adoption of the resolution will say "aye" contrary "no" and the resolution is adopted.

The incoming president of the state bar will appoint the committee.

We will now have the report of the Law Journal, Honorable Coleman Branton.

HON. COLEMAN BRANTON:

I have here the final report of the Mississippi Law Journal, but realizing that we have been here quite a long time, I will simply read the report (reading)

June 1, 1939

FINANCIAL REPORT OF THE MISSISSIPPI LAW JOURNAL

RECEIPTS

Balance on hand, June, 1938	$ 255.44*
Appropriation of State Bar Association	2000.00
Sale of Journals, back numbers and subscriptions	238.26
Cash advertisements	125.00
Law School assessment	120.00
Accounts receivable	96.55
Total	$2835.25

*Balance as of June 1, 1938 was $255.44, with accounts receivable, $49.67, but debts owed at that time amounted to $395.40 (printing bill for Vol. X, No. 3) and $7.00 (miscellaneous); therefore, a deficit from last year of $97.29 had to be taken care of out of this year's receipts.

DISBURSEMENTS

Printing and distribution of Journals

Vol. X, No. 3	$395.40	
Vol. X, Nos. 4 & 5	780.97	
Vol. XI, No. 1	409.53	
Vol. XI, No. 2	438.62	
Vol. XI, No. 3	335.47	
Vol. XI, No. 4	372.52	
		$2732.51
Postage and box rent		$ 19.03
Purchase of rare back numbers of Journal, citation books, etc.		22.87
Postal permit		10.00
Telephone and telegraph charges		3.97
Insertion in annual		30.00
Stationery, etc.		21.12
Office expenses—typewriter repairs, construction of bookcases, bookbinding		10.15
Total		$2849.65

Elliott R. Danzig,
Business Manager, Vol. XI.

(Applause)

THE CHAIR: Mr. Branton, your report will be filed.

MR. W. W. DENT: Do we have time to talk about the federal rules now?

THE CHAIR: I rather think not. We will now hear from Dean Kimbrough—Report of the Law School.

DEAN KIMBROUGH: I have been requested to make a statement concerning our law school—not make a speech—but five or six minutes talk about the law school.

I take it that every member of the Mississippi Bar—State Bar—and every lawyer in Mississippi for that matter, is or ought to be interested in the state's law school. The functions which it is performing are of such a nature and so far reaching in their effects that we as members of the bar ought to be vitally interested in that institution, and I want to express here my pleasure and gratification over the cooperation the law school has had from the state bar. I have found them always ready and willing to come to our aid and assistance in making a stronger and better law school.

For your information I might say that our law school is one of the oldest law schools—state-owned law schools—in the entire United States. The facts show that it is the fourth oldest state-owned law school in the entire United States. It is nearly a century old, founded early in the 1850's, and it has performed a wonderful work for the state and the bar through the years of its existence.

We now have a fairly good physical set-up. We have a good law building—the legislature gave us $150,000, which we put into a new law building a few years ago. We are now making an earnest endeavor to build up our law library. We had a very inadequate library. We have a small library now as compared with larger institutions. We have 15,000 well-selected volumes of law in the library today. We have a trained librarian coming from one of the best library schools in this country. She has catalogued the books of the law school and has arranged them so that any attorney wishing to do research work, brief work, can readily and easily get such books as he or she wishes by going to our library; and I am now extending an invitation to all lawyers who wish to do work of this kind to make use of your own law library.

Now possibly you would like to know something of the status or the rank of your law school. We have as good law school as like institutions throughout the country. Of course, naturally I think so, but we can see from outside developments and institutions whether I state it correctly or not. There is in this country what is known as the Association of American Law Schools, consisting of something like 100 law schools. This includes every state-owned law school in the United States. It includes law schools that meet the qualifications or requirements of this association.

We, of course, are members of this group. I think we are recognized as a law school possessing more than the ordinary qualifications and more than required by the association.

I had this to occur a few days ago which was gratifying to me. I talked or rather corresponded with a gentleman concerning law schools. He said "I have made some investigation"—this man was a law teacher, familiar with the law schools over the country —he says "I have had occasion to make some investigation about your law school in Mississippi," and he said "I think it will be gratifying to you to know that institutions like Harvard and Yale look upon the Mississippi law school as a splendid institution, ranking well with any law school in the United States."

I might say that all work done by any student in our law school for which credit is given is received without question in every law school in the United States—that means Harvard, Yale, Columbia, Princeton, Northwestern. They are glad to get our students and give full credit for which we have given them credit.

That has not always been so, you will understand, but with the development and growth of our law school. It is true we have a faculty staff of five full-time men, men who have had training in the larger institutions of the country. We also have two part-time teachers, working their way up, and these men are able to cover well and largely the fundamental subjects that the student who expects to practice in the law should have training for.

I will state to you frankly we are earnestly trying to—our students will testify that we are attempting to make the work done in the law school intense, and we select as practical subjects at least a great many that they will be obliged to use in their practice in the state.

To illustrate, on the subject of Mississippi pleading, we give a most intense training; the subject of evidence and other fundamental subjects that ought to be given to the student.

This thing occurred not long ago which amused me—it might be of interest to you: A young man in the second year, a rather hard and strenuous year in the law school; you have such subjects as Evidence, Pleading, Mississippi Pleading and other fundamental subjects—this young man coming out of a class on Evidence, walked along, gesticulating in a wild sort of way, talking to one of the seniors. That afternoon one of the seniors happened to come into my class and said "I want to tell you something; possibly you saw this young man walking along gesticulating as if he was very much interested in something." I said "Yes, I did." He said "The young man had just come from the class on Evidence, and he said ' I just want to say this: those guys in the law school have simply lost all sense of justice'."

Maybe so. We are trying to get the subject across and therefore in an intense way to the mind of the student—those fundamental subjects that they are going to have to deal with from the very start when they get out into practice.

Of course, you know and I know that we cannot make a seasoned lawyer in the law school, but we can drill him on those things he will have to work with when he goes out into practice.

Furthermore, we are trying to train him along other lines, ethical lines. We are trying to give him a broad knowledge of the legal profession, what is going to be expected of him as an officer of the court in the administration of justice in the courts of the state; that it is his business as well as the judge who sits on the bench, to assist in the administration of justice; that he is a sworn officer of the court; we impress those fundamental things upon his mind and the seriousness of it.

I have been very much gratified over the work of our Junior Bar, composed largely of the men who have come out of the law school of the University of Mississippi. It was a delight to me last afternoon and evening to sit in with that body and watch the work that those young men are doing and the manner in which they conducted their proceedings. It was enlightening and worth while. I hope a great many of you saw just what was done by those young men. The report here this morning indicated large constructive efforts and work on the part of these young men, and I am glad there is coming into the bar a group of young men of this kind about the work of the state bar, who did not come down here wholly for jollification or a picnic or something like that, but who come here to do constructive work, and work on those problems that submit themselves to the bar and which must be dealt with in a sane, conservative manner, in order that the bar may function as it ought to.

I thank you, gentlemen, for this four or five minutes which you have given me to talk about our law school. (Applause)

THE CHAIR: Thank you, Dean Kimbrough, for your talk.

The next on the program is the report of the Memorial Committee by Hon. Marion Reily.

MR. REILY: Mr. President, Members of the Bar. As chairman of the committee to draw a tribute to our departed brethren I present this very brief report. I wonder if you will forgive me if I make this observation. I have been in this building before, when men whose names I shall call from this roll were present. I have an idea that we will meet here again, and when we meet again, some of you who face me now will not be here, and your names will be read out as these names will be read.

Some men practice law because their parents compelled them to attend a law school; other men practice under other conditions. It was the consummation of the dream of their lives when they

were permitted to practice law. If I should slip to sleep this evening and were given an opportunity to breathe one wish before the tender fibre snapped which looses the soul from its tenement of clay, if I were permitted to have one wish granted, it would be that I be remembered as one who practiced law in the courts of the state of Mississippi. I feel that way about my profession.

I know not the way to deal with men except in the language of candor, and I would stifle something deep within me did I not say to you that there has crept out in this meeting evidence of a spirit which should not be here, a spirit of antagonism, a spirit calculated to divide men, a spirit in which members doubt the motives of other men. Let me, a very humble man, who is never ashamed to let it be known that he is anxious for the confidence, the respect, and the love of every member of the Mississippi bar—let me make this observation: as I call these names to you today and remember the part that our departed brethren have taken in this association and remember the spirit which they displayed in controversial matters here, let me appeal to you that we put out of our hearts every thought which might have led us to doubt the high intention, the worthy motives, the noble desires which have permeated the heart of every man at this convention, regardless of what position he may have taken upon the matters which we have discussed.

We are all struggling for one thing: to elevate the profession, to make it more helpful to humanity and more helpful in solving the problem of the administration of justice in the courts of this country.

Let us re-dedicate ourselves to that thought today, and may the calling of these names (some of whom you all loved) bring us back to a realization of the star of duty that should lead us always. (reading)

"Appointed by the President of this Association to perform this duty of love and reverence, we find the true expression of our feelings no easy task.

Upon the following list appear the names of men whose splendid ability challenged the admiration of the brightest minds of the nation. Eloquent of speech were many of them; charming was their address; courtly their bearing; courageous their hearts. Descendants of the noblest generation that ever blessed the south, they were of that school of attorneys who held high and sacred the profession which was theirs. Justice was their betrothed, their mistress and their queen. With bared blade they ever stood ready to fly to her defense. The empty mouthings of the demagogue, the cheap trickery of the hired hypocrite, alike felt their honest scorn and scathing castigation. The poorest citizen fled to them for counsel and protection; nor did the want of money bar any man from enjoying either. The most wealthy upon their wisdom and integrity in security leaned, undismayed by the grasping hand of envy and

ignorance. Theirs was the day when all men held that the lawyers' province was to champion only the truth and to contend only for that to which every man, regardless of race, creed or station was entitled.

To descend from that high eminence where every lawyer who is worthy of his station recognizes that he who accepts employment in a cause carries to the court room his character, and bid and barter for employment as tradesmen do, or engage their services by day or hour to all who can pay the price, was something foreign to the sphere in which they moved.

These men were of different degrees of ability; their accomplishments varied, but the star that led them was the same, even as the wise men of the East were led by the Star of Bethlehem to the manger and to the Christ, so were they led by the star of duty to the faithful discharge of every obligation to court, country, client, family and friend.

We cherish their memory, we reverence their names; we thank our God for their splendid lives, and we confess our gratitude and pride in the fact that we are members of the profession which was theirs. We humbly beg the Giver of all perfect gifts that their spirits may be with us and inspire us to nobler deeds.

I will call the names:

W. H. Cook ..... Jackson
A. K. Foote ..... Canton
A. F. Gardner, Sr. ..... Greenwood
J. W. Green ..... Jackson
R. R. Hardy ..... Jackson
William Hemingway ..... University and Jackson
J. K. Hirsch ..... Vicksburg
C. A. Jaquess ..... Tunica
C. C. Johnson ..... Meridian
Thomas Land ..... Kosciusko
Luther W. Latham ..... Eupora
W. C. Martin ..... Natchez

I wonder if I may be pardoned in halting here—the brightest mind I have ever contacted in my life, on the bench or in private practice, was that of W. C. Martin. A more lovable character, a finer Christian gentleman, a more courageous, eloquent lawyer in the courts of the land, I have never known than W. C. Martin. I knew him long before I began the practice of the law.

H. C. McCabe, Jr. ..... Vicksburg
H. C. Mounger ..... Greenwood
Lewis F. Owen ..... Belzoni
Joseph F. Penix ..... Jackson
J. A. E. Pyle ..... Iuka
Dunbar Rowland ..... Jackson
E. M. Smith ..... Holly Springs

A. T. Stovall ..... Okolona
John C. Street ..... Meridian
J. D. Thames ..... Vicksburg
E. G. Williams ..... McComb
C. H. Wood ..... Moss Point
J. L. Adams ..... Quitman
N. R. Allen ..... Shaw
E. E. Boone ..... Marks
W. G. Boyette ..... Jackson
David Clay Bramlette ..... Woodville
J. M. Brooks ..... Clarksdale
R. L. Bullard ..... Hattiesburg
Charles S. Campbell ..... Jackson
W. W. Capers ..... Jackson
C. C. Case ..... Jackson
W. M. Edwards ..... Shubuta
E. J. Gex ..... Bay St. Louis
John Sharp Donald ..... Jackson
J. M. Hickman ..... Edwards
E. E. Hindman ..... Jackson
Carl I. Laseter ..... Jackson
Sam B. Laseter ..... Morton
James A. Leathers ..... Gulfport
S. Van Little ..... Mize
H. M. McIntosh ..... Collins
L. T. McKenzie ..... Ashland
A. J. McLaurin ..... Jackson
C. H. Moffat ..... Senatobia
Chalmers Potter ..... Jackson
J. W. Shanks ..... Sumrall
H. S. Stevens ..... Hattiesburg
C. E. Thompson ..... Prentiss
J. P. White ..... Canton
T. W. Davis ..... Purvis
Dan A. McIntosh ..... Collins"

MR. REILY: (continuing): Mr. President, as chairman of the committee I submit to you this tribute.

THE CHAIR: I want to thank the chairman of the committee for the wonderful report. None of us know when the hour will strike for us to fall asleep. When that hour does strike for me, regardless of the faith in which I fall, I hope and request now that the Honorable Marion Reily be there to say what might occur to him to say at such a time.

We will now have the report of the Resolutions Committee (no response).

VOICE: I move that we adjourn until two o'clock and then take up the program where we have left off. We cannot complete the program before two o'clock.

MR. JACOBSON: I want to submit an amendment that we stay in session until two o'clock and then adjourn. It is now ten minutes after one and I move that we stay in session and finish up.

MR. BUTLER: I second the motion. There are a good many of us who have engagements and if we adjourn some will not be back here, and if we adjourn and come back we will not be through until four or five o'clock.

THE CHAIR: You have heard the amendment that we continue the program until we finish and then adjourn.

All in favor of the amendment will say "aye" contrary "no". The "nos" have it, and we will recess for lunch.

FRIDAY—JUNE 23rd, 2 P. M.

PRESIDENT KELLY (In the chair): The convention will come to order.

We will have the report of the resolutions committee—is the chairman of the resolutions committee present? (no answer)

We will have the report of the Complaint Committee.

HON. BEN H. McFARLAND (reading):

TO THE MISSISSIPPI STATE BAR: June 22, 1939

" I beg to report that during the past year only 15 complaints have been filed with me and 9 of them have been satisfactorily settled. Six of these complaints were filed within the last few weeks and I have not had time to get them adjusted because most of them relate to things happening some months ago and it will take a little while for the attorneys complained of to find their records and get these complaints adjusted. However, I feel reasonably sure that they will all be satisfactorily settled in a short time.

In addition to the complaints filed with me I have received 16 or 18 letters stating complaints against attorneys, but when I wrote these parties that under our rules of procedure it was necessary for them to file an affidavit setting out the facts in each complaint before any action could be taken, nothing further was heard about the matters complained of, and I presume the complaint was either settled or was without any foundation.

Practically all of the complaints sent me involved small matters and were caused by carelessness or oversight, and when the matter was brought to the attention of the attorneys against whom the complaint was filed, they readily cooperated with me in getting the matter satisfactorily adjusted.

I want to thank the Commissioners on whom I have called for help for their kindness in assisting me in these matters, and I also want to thank the attorneys against whom complaints were filed and who have settled these complaints for their cooperation.

It has been my pleasure to serve as Complaint Commissioner for the past seven years, in fact ever since the Mississippi State Bar was created by the legislature. I say it has been my pleasure to serve in this capacity because it has given me an opportunity to prove several ideas I have had for many years. I have always thought that kindness and courtesy would accomplish much more than rudeness and roughness; and that the Golden Rule would work in a practical way. I have found these ideas to be correct in my work as Complaint Commissioner. I have, further, always believed that lawyers as a whole are as honest and honorable as any other class or body of people. This idea has also been verified to my satisfaction. For the last several years complaints have been filed annually against less than one per cent of the 1400 to 1500 lawyers practicing in Mississippi, and I doubt if you could find 1500 merchants or 1500 farmers or 1500 other people of any class is the state against whom more complaints and complaints that would probably not be satisfactorily adjusted could not be properly brought.

I am happy to say that in my opinion our profession is a wonderful one, and that the membership of this association is composed of high-class, honorable men.

Respectfully submitted.

Ben H. McFarland
Complaint Commissioner
Mississippi State Bar"

THE CHAIR: We thank you Mr. McFarland.

We will next have report of the Finance Committee headed by Hon. David E. Crawley.

HON. DAVID E. CRAWLEY: Mr. President, Ladies and Gentlemen and Visitors: The appropriation carries with it—or the proposed budget carries with it, an increase of $500 and that increase is to be used for one purpose alone—to boost the allocation to the Mississippi Law Journal from $1500 to $2,000, the Law Journal having insisted that it requires that sum of money to enable them to properly edit that publication. That amendment was made in the committee room or in the commissioners' room when the matter was under consideration. Taking that increase into our budget will leave an unexpended balance, provided the anticipated revenues of the bar are what we calculated they will be, of $300. The total appropriation that will be made for the budget will then be $5500 instead of $5,000.

The current items, covering secretary's salary, postage, stationery, commissioners' expense, miscellaneous, covering the audit, as well as stationery, stamps, etc., will be the same as has been heretofore, and has been adopted by the association in the past.

There are 1246 members of the state of Mississippi who have paid their dues. There are 225 who are delinquent. There are a number on the inactive list and a number who have been exempt.
(Applause)

Now, is there any question any one desires to ask me?

VOICE: Vote.

THE CHAIR: A motion will have to be made before any action can be taken on this.

MR. JACOBSON: I move that the committee report be adopted.

VOICE: Second the motion.

THE CHAIR: All in favor of the adoption of the report will say "aye", contrary "no" and the report is adopted.

We will next have the report of the Commissioners, by Hon. Alexander Currie.

HON. ALEXANDER CURRIE (reading):

"The honor of presenting the annual report of the Board of Commissioners has been conferred upon me, an honor which I greatly appreciate, and I respectfully submit the following report.

1. Your Commission has earnestly endeavored to faithfully and efficiently discharge all of the duties devolving upon it. Seven meetings of the Commission were held during the year, four at Jackson, one at Vicksburg, one at Oxford and one in Biloxi, and all of these meetings were attended by all or a large majority of the members of the Commission and highly beneficial and interesting programs were arranged and carried out at all of these meetings, some of which were attended by some of our most distinguished lawyers and jurists, which indicated a very general and enthusiastic interest in the progress and general welfare of the Bar, and a most healthy and progressive state of our Bar was found to exist, and our Junior Bar is adding great moral force, character, courage and ability to our profession.

2. No complaint of any serious nature or character was made during the year concerning the professional conduct of any practicing attorney or person admitted to the practice of law and the general reputation of our Bar, both senior and junior, challenges the admiration of all people and of all professions, for ability, honor, honesty and integrity.

General rules of ethics have been formulated and promulgated, governing the conduct of all persons admitted to the practice of law, but in point of fact no code of rules can be framed covering and prescribing all of the duties of a lawyer in the varying and changing phases of litigation, or in the relations of professional life, and for this reason much must always depend upon the high morals and integrity of the individual lawyer, and be it said to their im-

mortal glory the Bar of Mississippi presents a clear and clean record for the year 1938-39, and it is a supreme pleasure to present this report."

THE CHAIR: I judge there is no objection to the report.

MR. JACOBSON: I move that the report be adopted.

VOICE: Second the motion.

THE CHAIR: All in favor of adoption of the report will say "aye", opposed "no". The report of the commissioners is adopted.

If there is nothing else, we are up to the concluding part of our program as made out and submitted by the program committee.

Nominations for officers of the Association are in order.

HON. W. L. GUICE: Ladies and gentlemen, about ten years ago when I was a young lawyer, the little town you have visited faced a peril that threatened to wipe away its entire existence. The state of Louisiana and some interests in that state had secured the passage of a law that cut off from us the raw resources that give employment to about 7,000 of the poorest people in the state of Mississippi. I interested myself in the matter, and I went to lawyer after lawyer and asked them: was it possible under the constitution of the United States in the proper court to strike down this legislation which threatened the very existence of this lovely town, the oldest town in the state of Mississippi. I found no aid anywhere until I went to Jackson. First I was refused, then I took it up again, and after months of effort and study he told me there was a chance to save this part of Mississippi, and assisting him I went into the district court of the United States at New Orleans, then presided over by Judge Holmes, the District Judge being absent, and from them obtained an injunction. The injunction was struck down by a three-judge court, and with his assistance I went with this man to Washington—went there and saw one of the most wondeful, finest examples of a fine, courageous lawyer fighting for poor men, that I ever saw. After his argument and his brief, one of the greatest ever filed in that court on a constitutional question, three hundred pages long, valued by me almost as much as I value my entire library, the supreme court by a vote of 7 to 2 upheld Judge Holmes, and my townsmen were saved.

Time after time after that I saw him in other courts and several times was with him and against him. As I sat there and saw him before me and before those nine august judges, the finest legal talent in America, I realized that in dignity, eloquence, character and poise and in the arts of a lawyer, none stood higher than this son of Mississippi, not only a son of Mississippi, but who comes from the poorest part of Mississippi, because this country is founded in the very cradle of our wonderful family civilization, and the family he comes from has become a part of the heritage of all that is fine in this state.

I am not going to take up any more of your time. I am just going to say this to you. I feel honored today that I can stand here and say to you that as a man who took law because he had to, but thought more of the beautiful romantic things of history, I have often wondered, I have often thought, were is possible for a man to have the courage, the ardor, the strength that those men of old who built the finest that was in Christianity for us to live up to, if in the law you have such a man. I worshipped in my childhood days the knights, men of honor, men who died on the field of battle, and I wondered if one could emulate that type of man. He is the man I shall present to you. I found that man. I feel that it is an honor to myself, and I feel that I am justified in taking up the time that I am taking at this closing moment of your convention.

I present the very finest of Mississippi gentlemen, the very noblest American patriot, Knight of the Law, none finer, none more courtly, none cleaner, the man who I hope will be your next President, Hon. William H. Watkins of Jackson, Mississippi.

(Applause)

THE CHAIR: Are there any further nominations?

HON. DUGAS SHANDS: I would like to have the honor of seconding the nomination of Mr. William H. Watkins. I do so first because I know he is a perfect gentleman, secondly, because I know that he is a true friend, and, third, that he is a very able lawyer.

I can think of no man in my entire acquaintance who would grace the presidency of this bar more than my friend, Hon. William H. Watkins. It gives me great pleasure to second his nomination.

(Applause)

MR. REILY: Mr. President, Members of the Mississippi Bar, the time has come for the election of our next president. We are fortunate in having in this body many men who would honor that lofty position. I take much pleasure in saying that all that has been said in this convention of the splendid gentleman whose name has been mentioned, expresses my views and my sentiments of him also.

I rise to place in nomination, however, another distinguished Mississippian, one whom I have known long and well for more than a quarter of a century. I know him to be a man who has devoted his life to his profession, as a man who has devoted his life to preserve the integrity of the laws of his country. As a private citizen in this state I have always believed that the welfare of this country depends upon having an open courthouse where the humble of the earth could come and have his case tried according to law, a courthouse where justice lives and truth lives. Being so interested, I have been concerned about the laws that have been introduced in the legislature of Mississippi. You know and every lawyer must know that every time the legislature meets in Jackson there hover about the Capital those who would make the dollar God; who would have the laws so changed, that by the improper use of money men

can escape the payment of every honest obligation. There has been a little army in Mississippi composed of humble lawyers, those who represent humble people largely—who watch what takes place about the legislature every time it has met for the last twenty-odd years, trying to save the people of Mississippi from what they conceive to be unjust legislation.

I know of no man in Mississippi who has served more unselfishly and without pay in this cause than the man I shall name. I knew him as county attorney, and there was no more efficient one in the state. I knew him as district attorney, where he was engaged in trying to enforce the law in Mississippi. He is a man who thinks not of the deeds that he does for his fellow man nor does he expect gratitude, for the man who expects gratitude does not deserve it.

The man whom I shall nominate is a son of a Confederate soldier, who fought for the stars and bars four long years; a man who enlisted in the world war—and this bar has never had as its president a man who was a soldier in the world war—

VOICE: I beg your pardon; Dave Crawley was.

MR. REILY (continuing): I beg your pardon and thank you for the correction. Surely the fact that we have honored one would not make us hesitate to honor another, provided he is worthy of that honor to which he aspires.

I take pleasure in presenting to you a man whom I have known a long time, I have known him in the courthouse, as a private citizen, a courageous fighter, a man whose ideas are anchored to the highest ideals connected with the profession. If you elect him you will find him a man who will be true to every trust and will so conduct himself as to reflect credit upon himself and upon this association.

I refer to none other than that genial gentleman from Hattiesburg, Honorable Alexander Currie. (Applause)

MR. DOTY: Mr. President and gentlemen of the Mississippi State Bar. I have practiced law in the state of Mississippi for the past 42 years. I have spent the better part of 36 years in south Mississippi. I have known both gentlemen—I have known Mr. Watkins for more than thirty-five years, and no finer man ever lived, as a man, a good lawyer: but we want a man for president of this association who will not permit, if it is in his power, the legislature of this great state to turn over to insurance companies the business of our country.

We want a man for president of this association who will conduct himself as the president of the association and not in any wise undertake any legislation that will not benefit all of the people of this commonwealth.

I second the nomination of Alexander H. Currie of Hattiesburg. (Applause)

MR. LOTTERHOS: Fellow members of the Mississippi State Bar, as some one said a few moments ago, there are possibly a great number of men in this organization who would grace the position of president and who would make excellent leaders for this association, and there are a number of men who well deserve the honor that goes with selection as president of the Mississippi State Bar. However, at this particular time I think that this organization has an unusual opportunity which may be exercised in the selection of our leader for this next year. The gentleman to whom I refer practices at the same bar of which I happen to be a member. I do not second his nomination, however, because of the fact—but it does contribute to this extent, that I have had the rare privilege of being rather closely associated with him from time to time, and I have had occasion to see him almost daily for the last 8 or 10 years, so that I welcome an opportunity to say a word for him on this occasion.

The man to whom I refer is not only one of the great lawyers of Mississippi, in my humble opinion, but he is one of the great lawyers of this country today. His reputation is not limited to this state, although he has tried cases in, I dare say, every county in this state many times. His reputation is established in the Supreme Court of the United States and in the other courts throughout this country. He has been a leader in this state association for a great many years. His efforts have always been toward progressive development in the jurisprudence of our state. He has likewise been a leader for years in the American Bar Association, and is recognized there for his ability and his integrity.

You know him as well as I do, and I will not go into detail about it. He well merits the honor which can be conferred upon him by election to this position, but I would not suggest that any one vote for him or any one else in order merely to confer an honor or distinction upon him. I believe it is to the interest of this bar to select this man. I have for a number of years hoped and believed, and I now hope and believe, that ultimately the Mississippi State Bar will accomplish a tremendous amount of good in this state. I think we are on the right road, though we move rather slowly. I say to you that if this man, with his experience, his ability, his willingness to work and give the time and energy necessary can take charge of this association as its leader, if he is given this position, this association will accomplish more in the next 12 months than in any like period before, and we have had some most excellent leaders, as we have at the present, Mr. Kelly.

I take great pleasure in seconding the nomination of Mr. William H. Watkins of Jackson, and I solicit for him your vote and support. (Applause)

HON. T. J. WILLS: We have come to the point now where it is necessary for us to select a leader for the association for the ensuing year.

I want to say to you I believe there are as many men who are capable of leadership and would grace that position as there are members of the association, but when it comes to a time like this, we cannot vote for all of our friends; we cannot place the honor upon all that we desire to place it on. We have got to select a man whose leadership we are willing to follow, whose action and conduct in the past will shed honor and glory upon our great association.

I rise to second the nomination of a man with whom I have tried as many cases on the opposite side of the table as on the same side, in the state of Mississippi, now living, except one, the lamented James W. Cassedy. I want to say in passing that with Jim Cassedy, in the trial of cases, I never found it necessary to place any agreement in writing, because whatever he agreed to he would remember and would live up to the letter of his agreement. As I just said to you I have tried as many cases with the nominee as any one except possibly Jim Cassedy, and with him, too, I have found that it has never been necessary and I have never asked him to put an agreement in writing, because he would live up to it so great was his honor and respect for his word.

He is young; he has not yet passed the zenith of life, full of vigor and energy. He served as district attorney and ably so, served his clientele, and never at any time has there been any doubt in the minds of his clients as to his efforts and his energy expended in their behalf.

I am reminded of the story of the old negro tilling the land before the delta was cleared when the only part clear was right along the highway, the field cleared probably a mile; the little cabins were along the highway, Sambo and Mandy living in one of them, Sambo indolent and slow and sleepy. Sambo had a mule, it was hard to make him go away from home, but when he turned at the end of a row he would get up some speed on the way in. Mandy heard a noise and she saw a little bear and she saw Sambo running. As Sambo drew near, she stepped inside calling "Run, Sambo, run". Sambo said "Mandy, did you think I was going to loaf on that job?"

So it is with our friend, Mr. Currie, he has never loafed on any job. He has three young men coming along that he is training expecting to enter the University of Mississippi, and when his time comes, he will leave three sons of his who will carry on the work at the Mississippi Bar. I second the nomination of Alexander Currie, and say to you that if you elect him you will be proud of the regime during the next 12 months. He will discharge those duties to the honor of himself and of the association. (Applause)

MR. ENGLE: With your kind indulgence, Mr. President, and members of the Bar, I want to give you a few observations which I believe should guide us in the selection of our President. Being a good democrat, and all of you being democrats, you will understand how I am thoroughly in order if I state to you that I view with alarm—as that seems to me to be quite a characteristic democratic expression—I do view with alarm the effort that has been made to inject into this association of professional men a kind of factionalism that is already in politics, that is already in many relations of life, but we lawyers—we should regard and we do regard the law as an art and a science and factionalism has no place here.

We lawyers in Mississippi are pretty generally general practitioners. There are very few lawyers in Mississippi who at one time or another in their lives fail to find themselves on one side or the other of almost any kind of case. Very few lawyers in Mississippi, regardless of their practice, have not found themselves defending criminal cases, though they practice civil law generally. If some one comes to me or to you with a damage suit and it is a clean damage suit, we take it. If some one goes to a brother lawyer and employs him and the party sued is covered by insurance and the insurance carrier comes to me or to you to defend, we defend.

So I hope that whatever the result of this vote may be that there will be nobody here who will vote for or against a man because it so happens that the greater portion of his practice is either representing the plaintiff or the defendant in damage suits. If those considerations shall actuate you, then you are initiating an element into this association that is fraught with danger and with peril. On this rock we may be destroyed.

We have had in recent years in succession two very distinguished presidents who in their practice usually appear upon the side of the plaintiff in damage suits. Each of them has given us fine service; But if we continue to elect, time after time, as our president some one simply because he represents the more lucrative practice of the profession, we certainly will identify ourselves in the eyes of the American Bar as having permitted factionalism and petty considerations to enter into the choice of our president.

To be president of the Bar Association of this state can be an honor to the man we select, and likewise can be an honor to us. I should think the principle which should govern the motive of each lawyer in casting his vote as to who shall be president of this association should be consideration of which of the candidates, by study and hard work and adherence to the ethics of the profession has advanced to the highest point in his profession, and which by long series of years has shown allegiance to this association by attendance at its meetings and participation in its deliberations.

We have two good men before us; we have Mr. Watkins of Jackson, and Mr. Currie of Hattiesburg. Personally I feel most kindly to each of them, and particularly my firm and Mr. Currie's firm have been associated in some beneficial litigation. Mr. Currie is a young man; he has not reached the meridian; his opportunities lie in the future. To deny him now will not be to deny him forever. We would be able to work and vote for him at some future date; but we have an opportunity to elect a man to this office who over a long series of years has risen from an humble start to a high position in the minds of the lawyers of Mississippi and in the minds of the lawyers of the American bar—one who has risen to a high position in the minds of the judges of the courts of Mississippi and judges of the federal courts and of the Supreme Court of the United States. We have an opportunity to declare to the bar of the country and to the lawyers of the United States, that we recognize ability and honesty in a man starting as Will Watkins did, from very modest beginnings and reaching the high point in his profession he has reached—My recollection is the first job he had was washing bottles in a drug store in Natchez. I don't know that he washed so many bottles, but the report is that those he did wash were washed exceedingly clean. And cleanliness has been the keynote of his life, both in his personal, professional, private and public life. He has been able to meet with triumph and disaster and to treat those two impostors just the same.

He is now in years on the sunset slope and if we pass up this opportunity to honor him and ourselves it may not come again. My friends: I have the greatest admiration for my friend Mr. Alexander Currie of Hattiesburg and my law partner fairly loves him—Both of the nominees are excellent gentlemen; I think they both live according to the philosophy of an old Grecian poet-philosopher "Archilochus of Paros", who flourished about seven hundred years before the Christian era and is justly termed the Swift of Greek literature—among many famous satires he says:

"Soul of my soul, thyself doth thou compose
And to the weapons of advancing foes,
A stubborn breast oppose
Thine no dejected sorrow, though defeat
would urge a base retreat—
Thine no vain boasting though well earned
renown,
Bring thee victor's crown,
Rejoice in joyous things, nor overmuch
Let grief thy bosom touch
And this still bear in mind
How changeful are the ways of human mind"

A nobler philosophy has not been often enunciated. Neither gentlemen will indulge in vain boasting, though well-earned renown brings him the victor's crown; neither one will indulge in grave sorrow though defeat might urge retreat. I think each will meet the issue squarely, manfully, nobly.

Now, I think is the time for us to take advantage of the opportunity of placing at the head of this association a man who in the practice of law, starting from modest beginnings has reached the high pinnacle of success that Will Watkins has achieved in the professional world, and thus tell the Bar of the nation as well as the Bar of the world that in Mississippi, ability, fidelity and honesty are still honored and recognized.

I second the nomination of Mr. Will Watkins. (Applause)

MR. CALDWELL: A year ago at Vicksburg there was a good deal said about the nomination of a young man for vice-president of this association, and at that time we voted for Mr. Currie, and he has not only done honor to himself but to the association. It was through Mr. Currie as one of the commissioners last year, and some of the younger members of this association that most of the work has been done, and in order that they may have the proper encouragement, I think it is time to elect a young man to lead us or a younger man to lead us in the efforts done by this association. I am glad we have two such outstanding lawyers as Mr. Watkins and Mr. Currie from whom to choose, we cannot make a mistake in choosing either. We will honor ourselves if we elect either one, and no great calamity will happen by the defeat of either, but I rise to second the nomination of Mr. Alexander Currie of Hattiesburg. (Applause)

HON. J. D. STENNIS: Mr. President, ladies and gentlemen, when we asked you to come to Biloxi we wanted you to feel free to do as you pleased when you got here and to vote as you please when you voted for your president and other officers and for the next place of meeting. We did not want you to feel that you were pledged to do anything for us. Ladies and gentlemen, that is the attitude that I take here today, to tell you that we do not want you to do anything because of anything we might have done to make your stay more pleasant. Mr. Will Watkins is one of the finest men I have ever known. He is a lawyer who in my estimation is just as fine as you will find anywhere in any state of the United States. My friend, Alexander Currie, over there, is just the same way. I rise to second the nomination of Alexander Currie as against Mr. Will Watkins because I feel so personally connected with my friend Mr. Alexander Currie because of the things that he has stood for and the work he has done for this Bar Association. With all realization of the fact that Mr. Watkins, as Mr. Guice suggested, has done a whole lot for this city of Biloxi in the seafood industry, because it was about that time that I began the practice of the law about ten years ago and Mr. Watkins came down here and with Mr. Guice did this thing for Biloxi, but my friend, Mr. Alexander Currie, has represented insurance companies, he has opposed insurance companies; we are not altogether on that proposition of insurance companies being represented—he represents them one day and the next day he is probably on the other side:

thats the way it is with most of us lawyers. I like Alexander Currie and I think all the rest of us do. I think he is a man who deserves the office; he is a man who will show what a young man will do in office: that is my purpose in getting up here, and I was not asked by one side or the other to get on the floor.

(Applause)

MR. POSEY: I move that the nominations be closed.

MR. JACOBSON: Second the motion.

THE CHAIR: All in favor of the nominations being closed will say "aye", opposed "no". The ayes have it, and I will appoint as tellers the following:

J. H. Caldwell, Gabe Jacobson, Landman Teller, W. A. Ellis, J. V. Gipson, E. B. Williams.

(Ballot was taken resulting as follows)

THE CHAIR: The vote is 110 for Mr. Watkins and 103 for Mr. Currie, and Mr. Watkins is elected president. (Applause)

MR. CURRIE: Mr. President, something has been said about factionalism within our ranks. As one who had the honor to be nominated for this highest office within our association and who had the distinction of having as my worthy opposite my good and long-time friend Mr. Watkins, I move that we make the election unanimous. (Applause)

VOICE: Second the motion.

THE CHAIR: You have heard the motion. All in favor will say "aye" opposed "no". The ayes have it and the election is unanimous for Mr. Watkins. (Applause)

VOICES: Speech, speech.

THE CHAIR: I have the honor of presenting to you your next president. (Applause)

HON. W. H. WATKINS: Ladies and Gentlemen, I have been asking myself "Why did you do it?", and I am reminded of the fact that a colored friend of mine met me on the street the other day and said "Good Morning, Judge." I said to him, "Why do you negroes call me 'Judge', you know I have never held any judicial office?" He replied that "We suppose if you are ever going to be a Judge, it's time."

I get the impression from the expressions of my brother lawyers that the same idea had a good deal to do with my election to the high office to which you have elevated me.

However, I am not unmindful of the honor which has come to me. I believe in the doctrine that no lawyer ever rises higher or

deserves to rise higher than the estimation of his professional brethren. I appreciate beyond expression the honor and the sentiments expressed by the members of the bar that I am fitted to be your leader for another year.

Gentlemen of the Bar, we are living in a changing age. The law is not static. It is not reactionary as is a multiplaction table. That great Judge Holmes of the Supreme Court of the United States said that the law was like a moving panorama upon which there was depicted the struggles of mankind. The law is changing and with it conditions change. We are followers of precedent but we must bear in mind that great lawyers and great judges discover new legal principles and new remedies as scientists discover new continents. I do not believe we should rush into any sudden change or changes upon the bar, new practice or reforms which they are not ready to accept but I do say that we must hold to the best things of the past and adopt new things which are shown by experience to be proper and tend to the advancement of our great profession.

I was in Washington the other day at the American Law Institute and heard that great lawyer, Senator Pepper speak. He referred to the changes which have taken place in the federal practice. He said he was a man of 70 or 75 years of age; that he was having to unlearn all the law which he had spent his life learning; that he never expected to write another special plea or replication or sur-rebuttal and that he had shed tears at the open grave of the demurrer. I say we must not do anything with undue precipitation or thoughtlessness but we must not close our minds to new ideas or refrain from doing things which would tend to a prompt and efficient administration of justice.

During this year, I hope we can work together building up our profession and making it worthy of the great leaders of the bar of former times about whom President Kelly has spoken so adequately.

I thank you very much for this honor and I solicit your cooperation in working for our association during the coming year. I thank you. (Applause)

(The audience rose)

THE CHAIR: Nominations are in order for vice-president.

MR. POSEY: I move you, sir, that all nominations be made hereafter and any second thereto without speeches.

MR. CALDWELL: Second the motion.

THE CHAIR: All in favor of the motion will say "aye" contrary "no" and the motion is carried.

MR. ROBERT W. THOMPSON, JR.: I wish to place in nomination for first vice-president, Mr. Eugene Morse of Jackson, Mississippi.

MR. GIPSON: Second the motion.

MR. GUICE: I move that the nominations be closed and that Mr. Morse be declared first vice-president.

MR. POSEY: And I move that the secretary cast the vote of the assembly for first vice-president, Mr. Morse.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. All in favor will say "aye" contrary "no" and the secretary will cast the vote of the assembly for Mr. Morse for first vice-president.

MR. JACOBSON: I nominate for second vice-president Mr. George Ethridge of Lauderdale county in recognition of his splendid work in the junior bar.

MR. SATTERFIELD: Second the nomination.

MR. POSEY: I move that the nominations be closed; that Mr. Ethridge be declared the nominee of this convention for the office of second vice-president and that the secretary cast the vote for Mr. Ethridge.

VOICE: Second the motion.

THE CHAIR: All in favor of the motion will say "aye" opposed "no" and the motion is carried, and you have elected Mr. George Ethridge your second vice-president.

The next order of business is the election of commissioners. The members of the different districts will assemble and elect your commissioners and announce the result of your election.

(WHEREUPON the following results were announced.)

First District ..... Ben H. McFarland, Aberdeen
Second District ..... Lee Guice, Biloxi
Third District ..... Hindman Doxey, Holly Springs
Fourth District ..... Dick Denman, Greenwood
Fifth District ..... Jim Crawley, Kosciusko
Sixth District ..... W. A. Geisenberger, Natchez
Seventh District ..... Harry Bryan, Jackson
Eighth District ..... J. Knox Huff, Forest
Ninth District ..... Landman Teller, Vicksburg
Tenth District ..... Jesse H. Graham, Meridian
Eleventh District ..... T. Semmes Luckett, Clarksdale
Twelfth District ..... Quitman Ross, Laurel
Thirteenth District ..... R. S. Tullos, Raleigh
Fourteenth District ..... J. Hunter Garth, Hazlehurst
Fifteenth District ..... E. B. Williams, Poplarville
Sixteenth District ..... J. E. Caradine, West Point
Seventeenth District ..... J. H. Caldwell, Charleston

THE CHAIR: The next order of business is the selection of the place of meeting for the 1940 bar convention.

MR. KELLY HAMMOND: I move that Jackson be selected as the next place of meeting of the State Bar.

THE CHAIR: I have some telegrams and I will read them:

Mrs. Alice Nevels,

Secretary Mississippi Bar Association,

Buena Vista Hotel, Biloxi, Miss.

Heartily join invitation being extended by Hinds County Bar Association to your Association to meet in Jackson next year. We have best convention facilities in the state and more members of your association than any other city. Sincerely hope you will accept the invitation.

W .A. Scott, Mayor.

Mrs. Alice Nevels,

Secretary Mississippi Bar Association,

Buena Vista Hotel, Biloxi, Miss.

We would like to supplement invitation being extended Mississippi Bar Association by Hinds County Bar Association to meet in Jackson next year. The Capital City is most centrally located and convenient to all members. Has excellent hotel and convention accommodations and we will gladly cooperate in every way to make next years meeting a succes.

Jackson Chamber of Commerce

Mrs. Alice Nevels,

Secretary Mississippi Bar Association,

Buena Vista Hotel, Biloxi, Miss.

Jackson civic groups cordially invite the Mississippi Bar Association to hold its next years meeting in the Capital City and will gladly cooperate with local members in making the meeting an outstanding success. We will look forward to the opportunity of entertaining you next year.

Garner Lester, President Rotary Club.
Dr. J. W. Lipscomb, Pres. Exchange Club.
A. W. Garraway, President Lions Club.
Merle Mann, Pres. Jackson Business Club.
T. J. Luke, President Kiwanis Club.
Alice Nevels, President Pilot Club.

Honorable R. M. Kelly,
President State Bar Association,
Buena Vista Hotel

In behalf of the City of Laurel and the local Bar Association I gladly extend a sincere invitation that the Mississippi Senior and Junior Bar Association hold their 1940 convention in this city of Laurel, industrial center and one hundred per cent chemurgic

city of the state. Laurel has not had the convention for many years and many of you remember the last meeting here and we promise you the same entertainment and good time as then. A city of beauty and progress. We also promise the purest of water and the same brand of other drinkables from the same source that you are having at this convention no stronger and no weaker. Sorry that I was personally unable to be with you at this convention.

G. W. Hosey, Mayor

R. M. Kelly,

President Senior Bar Association,

Buena Vista Hotel, Biloxi, Miss.

As the 100 per cent chemurgic city of the United States and because of the example it is setting as to what the new south really means the city of Laurel extends greetings to the members of your organization with best wishes for a pleasant and profitable meeting of the Association at this time. On behalf of the city we want to extend also a cordial invitation to the members to hold their next convention in the City of Laurel. We will be glad to have you and sincerely believe that you will be highly pleased with your visit.

Laurel Chamber of Commerce,

George Hymers,
Chairman of Convention Committee.

HON. W. S. WELCH: We desire to extend to the association a cordial invitation to meet at Laurel:

MR. POSEY: Mr. President, Ladies and Gentlemen of the Mississippi State Bar, On behalf of the Hinds county bar association, I wish to extend to this organization a cordial welcome to meet in the city of Jackson next year; on behalf of the Chamber of Commerce I wish to extend to you a cordial welcome to come there; on behalf of all of our hotel facilities I wish to extend to you a welcome to be there; and on behalf of our highway system I wish to extend to you a cordial welcome to be there; and on behalf of our railroads and airways I wish to extend to you a cordial invitation to be there; and on behalf of the good men and women of Jackson: I extend the invitation on behalf of all the citizens of Hinds county. It has been many years since this organization met in the city of Jackson; the Hinds county bar association feels that it is something that is due it; they extend a cordial invitation to meet there and give us the opportunity and honor of doing our very best to entertain you in the very best way that it is possible for us to do in 1940.

MR. ESTOPINAL: I wish to extend an invitation to this state bar to return to the Mississippi Gulf Coast next year. We have spent millions of dollars in making preparations to entertain conventions in this section. We have built scenic driveways and a great

sea wall to protect them from the ravages of the sea, we have natural advantages that cannot be found in any other part of the United States. We have an abundance of palatial Hotels. The refreshing sea breezes. And this bar association would do well to adopt this coast as its permanent convention place.

We have one of the most modern and beautiful hotels in the South Land. The Edgewater Gulf. This hotel is complete in every way, with its 18 hole golf course right at its door, its large and healthful swimming pool, its wharf over the water for over 1000 feet. It nestles among large spreading and moss covered oaks, with large and spacious grounds shaded and comfortable. It is located just about midway between Gulfport and Biloxi, right on the waterfront. It has everything in complete form. Cool rooms, all with baths, a complete drug store and the most delicious foods cooked by the best of chefs, served in most acceptable manner. I believe we would do well to leave the cares that necessarily face us in our daily occupation, leave the interior of the state, and come again next year for our convention to this fascinating coast. Why go to Jackson for a convention? We must go there to do our business, our state capitol is located there, and most lawyers have plenty of business in some of these state departments at all times. It cannot afford much recreation and certainly no change by going there for our convention. The human element in us demands a change once in a while, a place for complete recreation of both body and mind. This coast is the only place in the state that affords this character of rest. Is it not our duty to vote to return here next year? Therefore in behalf of the Edgewater Gulf Hotel management, I extend to this association a most cordial invitation to hold our 1940 convention at that hotel. This also includes all our coast citizenry and Chambers of Commerce.

THE CHAIR: All in favor of Jackson as the place of meeting for 1940 will rise.

All in favor of Laurel as the meeting place will rise.

All in favor of the Edgewater Gulf Hotel will rise.

(The vote was counted)

You have selected Jackson as the place of meeting of the 1940 convention of the Bar.

I now declare the 1939 convention of the Mississippi State Bar closed.

I certify that the foregoing is a true transcript of the proceedings of the annual meeting of the Mississippi State Bar held in Biloxi on June 22-23, 1939.

Alice Nevels,
Secretary
R. M. Kelly,
President

REPORT OF COMMITTEE ON RULES OF FEDERAL PROCEDURE

The undersigned members of the Committee appointed to study the New Rules of Procedure in civil cases in the District Courts of the United States and to make a report on the question, whether similar rules shall be adopted by the Legislature, governing the practice in the courts of this state, respectfully report as follows:

Your committee has discussed the question with members of the Bar and among themselves and have reached the following conclusions:

1. That the majority of the members of the Bar has not had sufficient time or experience with the Federal rules to form a just and impartial judgment as to their real value and utility.

2. That the issue is one within legislative jurisdiction, and that, until the members of the Bar shall have had time to form an impartial, deliberate and unbiased opinion of the merits of the rules, any expression of the Bar in any meeting which represents a minority of the whole membership will be deemed to be representative of the opinion of only such a minority, and therefore, of no substantial value.

The undersigned members, therefore, recommend:

1. That no action be taken on the adoption of said rules of civil procedure by the Legislature until a majority of the members of the State Bar shall signify their desire, in writing to be signed by the members, that the question receive legislative consideration.

2. That requests of members for legislative consideration shall be filed with the Secretary of the State Bar, whose duty it shall be to preserve them, subject to examination by any member of the Bar, at any time.

We respectfully submit this report, request that it be filed and received and that this committee be discharged.

S. C. Mize, Chairman,
V. A. Griffith,
W. E. Gore.

Proceedings

of

Junior Bar Section

of the

Mississippi State Bar

Held at

BILOXI, MISSISSIPPI

June 21, 1939

Junior Bar Section

JOURNAL of the MISSISSIPPI STATE BAR

AUGUST, 1939

PROCEEDINGS OF THE THIRD ANNUAL MEETING OF THE

JUNIOR BAR SECTION

OF THE MISSISSIPPI STATE BAR

Hon. John C. Satterfield, Chairman, called the meeting to order.

Mr. Semmes Luckett presented the report of the Committee in connection with the proposed adoption of the new Federal Rules in the State Courts.

Mr. Luckett made a full discussion of the report and of the chief features of the new federal rules, and responded to a number of questions from the floor.

Mr. David Cottrell asked that Mr. Luckett state the chief objections which had been advanced to the adoption of the rules. Mr. Luckett responded that the chief objections were the changes made in the privileged communication statute and the method of instructing the juries, which changes were eliminated in the report of the committee.

Mr. Robert Calhoun asked that the chief advantages of the Rules be stated by the Chairman, Mr. Luckett, which was done.

Mr. Jimmie Eaton asked that the chairman explain definitely the effect of the Resolution.

Messrs. Quitman Ross and W. W. Dent spoke in opposition to the rules and to the adoption of the Resolution; and Mr. Jimmie Eaton spoke in opposition to the Resolution.

Messrs. Ed Brunini, H. B. Gardner and Chas. Sisson spoke in favor of the rules; and Mr. W. A. Strong spoke in opposition to the Rules and Resolution.

MR. W. A. STRONG:

About a year ago the President of the Bar Association appointed a committee, composed of Chief Justice Smith, Judge McGowan, Judge Ethridge, the Dean of the Law School, such lawyers as Ellis Cooper, practicing attorney, and those men long in the experience of practice of law and study, and they did not see fit to recommend

the adoption of the New Federal Rules, and I think we younger members of the Bar Association should follow their example and not adopt or recommend the adoption of any new Federal Rules that change our procedure at all. I wish to understand your Resolution.

BY THE CHAIR:

If I may state the gist of the Resolution—some of you have come in since the Resolutions were read. The gist of the Resolution is that there may be registered with the Secretary of the Bar Association a vote by the members of the Bar of Mississippi who have paid their dues, whereby they request that these rules may be considered for adoption in Mississippi, and if a majority of the Bar designate their opinion that they should be adopted, then the President of the Bar is asked to recommend to the legislature an adoption of an act whereby there may be suggested to the members of the Bar whether or not they shall be adopted, and upon a second vote the majority of the members of the Bar who have paid their dues—whereby they will adopt for use in Mississippi new rules as near in accord with the Federal Rules as possible, except they shall not adopt any rules affecting the privilege of witness now existing. That is the gist of the resolution which is before the body for further discussion.

MR. DUGAS SHANDS:

I agree with the gentleman: we have quite a heritage. I also think we owe it to those going ahead of us to make such improvement as we can in the practice that we have inherited from our elders. It is also our opinion that we owe our client the duty to dispose of his suit as quickly as possible, and anything that would dispatch his business with the least expense—anything that will bring about that result in as inexpensive manner as possible, is something we owe to our clients; we are practicing law because we have a client, and we have to think of them in the trial of their law suit, and we owe it to our client to conduct his suit in the least expensive manner; and whatever will bring that about to the best interest of all, I think we should do.

BY THE CHAIR: Any further discussion.

VOICE: Vote.

BY THE CHAIR: If there is no further discussion, the motion that the report which has been read to you be adopted. Those in favor of the adoption of this report make it known by saying "Aye"; those opposed say "No". The Ayes seem to have it.

VOICE: Stand and count them.

BY THE CHAIR: The call is for a standing vote. Those in favor of the Adoption of the Committee's Report, stand and remain standing until you can be counted. (Those voting in favor of the adoption of the report were 34.)

Those against the adoption of the Report of the Committee, please stand, and remain standing until you are counted. (Those voting against the adoption of the report were 16).

The Report of the Committee is adopted.

THE CHAIR: The next matter for presentation and discussion is the Bureau of Identification, Investigation and and Statistics in Mississippi and George M. Ethridge, Jr., of Meridian, is Chairman.

I might state that in several reports which have been made to the Executive Committee, this Committee has done some very exhaustive, splendid work— a great deal of work, we will now hear the report of this Committee of which George Ethridge of Meridian is Chairman.

MR. GEORGE M. ETHRIDGE, JR.: Mr. Chairman and members of the Junior Bar Section, it is not my intention to make any lengthy talk on this subject.

Your Committee has functioned some time over a year, and about all we can do along the line of discussion is to give you something of what we have done. I might show you the report we have made and say to you that it is open to the inspection of any member of the Junior or Senior Bar.

This Committee was appointed by action of the Junior Bar Section at the last meeting. You will recall at the last meeting Honorable Walker Broach who was District Attorney of the Seventeenth District, presented this matter in a splendid address and asked the Bar's cooperation in getting the State to establish a Bureau of Identification, Investigation and Statistics to help them in their endeavor to enforce the laws. As result of that, the Junior Bar endorsed a bill which had been modeled after the Federal Bureau of Investigation—of course, changed so as to meet the varying needs of Mississippi in law enforcement.

As I said in the beginning, your Committee, is composed of myself, as chairman, two District Attorneys and two County Attorneys, men interested in prosecuting criminals throughout the State of Mississippi who confronted them in their endeavor to enforce the laws of the State of Mississippi.

Not enough can be said concerning the constantly increasing organized crime in the State of Mississippi, not just little petty crimes we see all along the open parts of our towns and cities in Mississippi, but those types of criminals that are organizing themselves, banding themselves together against society with the idea in mind to go forward with their criminal activities in an effort to bring a financial gain to themselves.

In order to work this—bring it down to a point, so to speak, I have prepared a resolution which is part of the recommendation of the Committee, and this Resolution is just a gist of the report

and recommendation of the Committee, consisting of four recommendations which I shall read to you at this time. This is part of the report and consists of publications, and this consists of editorials that have been written on the subject. It also consists of the correspondence that has been carried on between your Committee and your chairman, and consists of various and sundry resolutions passed by organizations over the State who have taken a personal part in an endeavor to have this piece of legislation enacted in law.

In my home town, the city of Meridian, the high schools, have taken an active part; the Junior Chamber of Commerce, and various other organizations—I am not able to name them all, favored the adoption of the Resolution. And similar action took place in other organizations in every other part of the State.

This is the meat in the cocoanut of the report, so to speak, I will read the report.—

As a matter of history, this bill has already been introduced in the legislature twice. Due to the fact that the Mississippi Highway Patrol Bill took precedence in the eye of some of the legislators on the Judiciary Committee, they took that up first and passed that bill and that law is being administered now and in my opinion very ably.

The Resolution I refer to is a Resolution by the Junior Bar Section regarding the report of your Committee:

(Reading)

WHEREAS, the Junior Bar Section of the Mississippi State Bar, through its committee on a proposed Bureau of Identification, Investigation, and Statistics for Mississippi, has carefully studied the provisions of the particular proposed bill with the view of presenting it to the 1940 session of the Mississippi Legislature for consideration; and,

WHEREAS, the said committee has performed its duty and responsibility to the best of its ability in an effort to fulfill the purpose for which such was created and appointed; and,

WHEREAS, the State of Mississippi is in dire need of such legislation for the combating of organized crime within its borders; and,

WHEREAS, the committee has recommended that the Junior Bar Section endorse this bill in its present form for presentation to the next session of the Mississippi Legislature and; that the committee on this subject, be continued not to consist of the same personnel, but to be left to the discretion of the Chairman of the Section, and that this committee be clothed with the duty and responsibility of presenting this matter to the legislature, and further, that the committee be authorized to take procedure in

popularizing the proposed bill to the individual legislators, the general public, and any other interested parties, bodies, or organizations.

NOW, THEREFORE, be it resolved by the Junior Bar Section of the Mississippi State Bar assembled at its regular 1939 meeting in Biloxi, Mississippi:

That the report of the committee on a Bureau of Identification, Investigation, and Statistics for Mississippi be and it is hereby accepted and approved.

That the Junior Bar Section endorses the bill in its present form for presentation to the next session of the Legislature.

That a committee on this subject be continued, the personnel to be selected by the new chairman and that the committee is clothed with the duty and responsibility of presenting this matter to the legislature, and further that the committee take procedure in popularizing the proposed legislation bill to the individual legislators, the general public, and any other interested parties, bodies, or organizations.

Mr. Chairman, if there are any questions, why, I am glad to answer them. It is hard to cut this short, we have already discussed it and taken up a good deal of time with it heretofore. I am sure most of you men are interested in it, studied it, and lots of you know a good deal more about it than I do. I have had very little experience in the practice of criminal law but I have some experience in endeavoring to help enforce the law.

I present this Resolution, Mr. Chairman, at this time as a Resolution recommended by the Committee. (Applause)

BY THE CHAIR: I suggest that there are one or two here who did not hear the report of the committee in general, and if you will state the gist of the report without going into all of the benefits, I think it will help them to understand the resolution, and be better prepared to vote on it.

The Executive Committee of the Junior Bar Section suggested that the bills be printed, so the members could have copies of them, and we have copy of the bill—they will go around to this small group—I doubt if there would be enough to go around further.

The bill, in the first place is a bill which is entitled the Creation of the Department of Identifications, Investigation and Statistics in Mississippi. The purpose of the bill is to aid the local law enforcing agencies in enforcing law. The bill provides for the Board of Control, consisting of seventeen District Attorneys in the State of Mississippi, plus the Attorney General, and they shall meet and promulgate certain rules and regulations regarding the department. Of course, there are certain rules and regulations other than those set out in the bill.

The Departments of the Bureau would be:

Chemical Analysis,
Department of Ballistic Experts,
Finger Printing Department,
A competent Medical Staff,
An Auditing and Accounting Department,

and of course, such other departments and employees as the Department needs for it to function in every branch, so far as its operations will allow it to do the things prescribed in the Act.

We tried to discuss it on the basis of about $30,000.00 for a year's expense for the Department; and if you gentlemen will remember, some of you are from Jackson, and some will remember that the legislature appropriated $25,000 in an attempt to aid the enforcement agencies of Rankin county in their endeavor to combat organized crime, and I believe it was well spent, but I do believe that if we could have taken that money at that particular time—of course, they have done the best they could, no argument there—but we think it would have been well spent in starting something like this in giving a permanent department in the State of Mississippi to investigate the criminal, and to assist the District Attorneys and prosecuting attorneys in their endeavor to prosecute the criminal who committed the act. I think the big difficulty is the difficulty of the District Attorneys of the State of Mississippi making $3,000.00 with no expense money provided for investigation of criminals, etc.

I know there is a great cry to cut down expenses, finances, and in that regard it is very flexible, in that the legislature will have control over the department by the appropriation it makes for them. Therefore, they cannot function to any further extent than the legislature provides in the way of finances.

MR. W. W. DENT: Do I understand that this is to be a Bureau?

MR. ETHRIDGE: No, a Department.

MR. DENT: How does it provide for officers?

MR. ETHRIDGE: It provides for the creation of the Board of Control composed of the seventeen District Attorneys and the Attorney General of the State, as the Board of Control, and the Board of Control shall select the Superintendent.

THE CHAIR: Any further questions of the Chairman of the Committee of this proposed bill and resolution?

You have heard the Motion of the adoption of this Resolution and report, is there a second.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. Any discussion on the resolution?

The question is on the adoption of the Resolution, which has been read to you by the Chairman of the Committees. Those in favor let it be known by saying "Aye"; opposed "No".

The motion or Resolution is unanimously carried.

MR. GEORGE M. ETHRIDGE: I have one further resolution. It is short:

(Reading)

Motion in regard to that would be to the effect that the Junior Bar Section carry the report to the Senior Bar at the general meeting of the State Bar.

I would like to say: we believe it takes the more mature minds of the older heads to get the Bureau. If we have the full cooperation of the older heads of the Bar, and present the matter to the legislature, that we will be much more successful; and I present that at this time, and make that motion. Motion seconded.

THE CHAIR: You have heard the motion of the Chairman of the Committee, that the motion be adopted. Any discussion. If not, those in favor of the motion, which has been seconded, make it known by saying "Aye", opposed "no".

The motion is carried, the Resolution is adopted.

MR. ETHRIDGE: With this one word, I am through. Mr. Satterfield asked me to serve as Chairman of this Committee. I knew that I would not have the opportunity to do the things that ought to be done in regard to this particular service, but I have done the best I could, and the Committee has been very wonderful, and I wish now to express my appreciation to every member of the Committee who are here at this meeting, and those who are not here also, for the cooperation they have given to the efforts of this committee in the preparation of this report and to this work. I wish to say that the next committee will have the same cooperation of this committee that has taken part in this activity.

(Applause)

MR. GORDON ROACH: As a member of the Committee of which Mr. Ethridge was Chairman, I wish to express our sincere appreciation for the splendid work he did; and there was very little that we contributed to that work.

THE CHAIR: We have one other item and in view of the fact that we have sufficient time before presenting the Chairman of that committee, I want to report what happened, and I'll tell you that I don't know whether it happened or not, but anyway they say that the first time Chas. Sisson came before the Supreme Court on appeal that he was very much excited, and he had spread on the table all the papers and brief he was going to use, not in order, he simply had the data, and he started out: "My unfortunate client",

and that was all he could remember, he hunted through his papers and started again: "If the Court please, my unfortunate client"; he fidgeted and fumbled through his notes again, and again he started and still he could not find his notes, and he said again: "If the Court please, my unfortunate client"—and one of the Judges kind of smiled down on him and said: "We wish to say the Court agrees with every word that this gentleman has said".

(Applause)

I now present to you the Chairman of the Committee, which committee was to study and make report to us on the Method of Selection of the Judiciary. This Committee was appointed by the Junior Bar Section at the meeting last year, Mr. Charles A. Sisson, who is Vice Chairman of this Section, Mr. Sisson. (Applause)

MR. CHAS. A. SISSON: I don't remember all the details, but I remember this, I remember that I lost that first case.

(Applause)

The Committee of which I am Chairman has no resolution to present to this organization, merely a report. I want to state that after the Committee was appointed the different members were contacted and asked to give the matter consideration. It was then through the mail that a questionnaire was sent out, more or less to find out how the different members felt; and as was expressed at the Vicksburg meeting, and being a lot of disagreement, there was still a lot of disagreement in the Committee, and as a result of that, we have report of a majority and a minority of that Committee; the report is as follows, and then I will briefly give some of the ideas of the members of the Committee:

Your Committee, composed of David Cottrell, Jr., W. W. Dent, L. Glenn Fant, Jr., J. R. Lobrano, and Charles A. Sisson, is not in agreement. The majority report is as follows:

The method of the selection of the judiciary should be changed.

The majority favors the Wood Plan, which in substance is as follows: The members of the Mississippi State Bar, in the Supreme Court, Chancery Court and Circuit Court Districts, respectively, elect a committee consisting of five members for each district. Each committee shall submit to the governor a list of five lawyers from the respective districts wherein a judgeship is to be filled. The governor shall appoint one from the list submitted to serve as judge of the Supreme Court, Circuit Court or Chancellor, as the case may be. Such appointee shall serve for four years, at the end of which he shall go before the electorate which shall vote whether the incumbent be retained or rejected. If retained, he shall serve for four more years. If rejected, another list of five shall be submitted to the governor, who shall appoint one from this list to serve. The committees in the respective districts shall be elected by secret ballot mailed each member in the district by the Secretary of the Mississippi State Bar. No member of the committee shall be eligible for an appointment to a judgeship.

The majority does not feel that this project should be pushed at this time; but that it should be mentioned at the next meeting of the Junior Bar Section and Mississippi State Bar, so that the members can study the subject and be in a position later to pass upon the question of whether a change should be made.

A strong minority of the committee reports that there should be no change; that the present method of selection cannot be improved upon.

Gentlemen, there is no doubt, I am sure, all of you have heard criticism, whether justified or not, but it is up to each individual member of the Bar. Some of the criticism led, I am sure, to the majority report of this Committee; some being to the effect that too much politics was injected into or rather was connected with the Judiciary; that is, the Judges are forced to go out, with opposition, to the electorate, seeking the place, and the majority report is to the effect that they should not be placed in this position. Others felt that because the judiciary is now elected, that some members of the Bar who would probably make the best judges did not aspire to the positions, I did not know whether that is true or not—it is up to the individual opinion. Others felt that the elective system is a failure, the old appointive system was a failure, and we might try this system. Of course we all may be mistaken. As I said, the committee is a splendid one, and I believe did some good work.

At the last session of the Bar Association there was a big split up; I am sure at this time there is a split, and the Committee's report is, that is, the majority report, that no action should be taken, but the matter should be brought to the members of the Bar, both Junior Section and Mississippi State Bar, and after further study, if a change is desired, they could then put it to a vote.

I want to state frankly, that the Committee did not have a meeting other than through correspondence, as a result of this split up. The Chairman did not feel that it would be worth while to take time off to meet in Jackson, that being the logical place, because the committee was scattered all over the state, and Jackson would have been the most central place, and there being disagreement among the committee, the committee did not report as a whole, but individual views were given through the mails.

To do justice to one member of the Committee; Bill Dent was appointed subsequently, after the meeting, and the Chairman did not know of this appointment until the affirmative report of the committee was made up. I then contacted Bill Dent by mail that I'd been advised by reliable sources how he stood on this matter, and I so entered his name, and I did not hear, and I trust I was correct—you are with the minority, opposed to any change?

W. W. DENT: That's correct.

THE CHAIR: The report is that the Report be received and filed.

VOICE: Second the motion.

THE CHAIR: Is there any discussion of this motion?

If there is no further discussion; all in favor of this report being received and filed, will please say "Aye", opposed "No". The motion is carried.

THE CHAIR: Before we adjourn this afternoon session, I wish to extend the thanks of the Junior Bar Section to some of our distinguished friends and visitors who have been with us during this meeting: we have quite a number, we have Judge Sidney Smith, Dean Kimbrough, Dean of the Law School of the University of Mississippi, Hon R. M. Kelly, President of the Mississippi State Bar, Hon. Alexander Currie, Hon. Marion Reily, Judge Venable, past President of the Mississippi State Bar. We are always delighted to have you meet with us.

We will have another session of the Junior Bar Section this evening at 7:30. We will meet in this same room.

The meeting stands recessed until 7:30 p. m.

EVENING SESSION OF THE JUNIOR BAR SECTION OF THE MISSISSIPPI STATE BAR

Biloxi, Miss.,

June 21, 1939

HONORABLE JOHN C. SATTERFIELD, Chairman, called the meeting to order.

MR. SATTERFIELD: We will give the boys on the outside a few minutes to get in.

We have some competition, it seems, somewhere, this evening. We will probably be able to get along. I believe the boys will be coming in now.

We have on the Program this evening the report of two committees. I notice there seems to be too a Chairman's address of some kind. I believe that the reports of the committees are much more important than the Chairman's Address, and I believe we should proceed with the Report of the Committee on Cooperation with Young Lawyers. Jimmie Ogden of Magnolia and Ed White are Chairmen of that Committee. Jimmie Ogden is Chairman of Section "A" and Ed White is Chairman of Section "B". Due to the fact that Mr. White's partner was out of the office, it was impossible for Mr. White to be here. We will now have the report of Mr. Ogden of this committee. (Applause)

MR. JAMES N. OGDEN: The report of this committee is notable chiefly for its brevity. That does not mean that the Committee has not tried to function. You will notice that the Committee has been divided into two sections, A. & B., and Mr. White has really done very good work.

The main purpose of the committee is to do what we can, to offer greetings, if nothing else, to young lawyers. Every one of us now are young, for that matter, and we have been younger, and we hope to get younger, but when a young lawyer starts he needs somebody to say "Hello! I called to see you, to see if there is anything I can do for you; if there is, I want to do it". When we came along nobody did that for us and we want to welcome the young lawyers and let them know that we feel kindly toward them and want to help them all that we can.

The purpose of the Committee too is to advise with the young lawyer, in the matter of his practice. Lots of us go into practice after graduating from the University, get out of school and go right to work, and we have never been inside of a law office; we don't know whether a lawyer has one or two desks, and things like that, and the purpose of this committee is to give them as much advice as is possible on those practical matters.

I might say in that connection, that this Committee has made it its business to contact all the young men who have taken the Bar Examination and the University graduates, and offered its services. Several have made it known that they would avail themselves of those services.

I cannot say that we have done anything or actually located anybody, but we hope that this Committee in the future will be able to do that kind of work.

Our report has been printed in the Journal and I wish to assure you that it has been a pleasure to do this work, and as our report has been published, I really only wish to offer our Committee Report, and move its adoption; but before I do that, I wish to say that I hope this committee will continue to function with change of personnel. I think the personnel should be changed, and I hope the continuation of the committee, and that the committee will be able to do some valuable service for young lawyers. If we do not help but one, if we do just a small part, I think the committee has justified its existence. (Applause)

THE CHAIR: You have heard the report of the Committee, and the motion that this Committee be continued, subject to change of personnel.

MR. ROBERT E. HAUBERG: Second the Motion.

THE CHAIR: You have heard the Report of the Committee and the second of their motion that the Report be accepted and that the Committee be continued. All in favor say "Aye", opposed "No". It is unanimously carried.

THE CHAIR: The next item of business on the program this evening—I will have to ask, if you please, that we be quiet, we want to dispatch the business as quickly as we can. The Code Committee. That Committee which was appointed in connection with inaccuracies, omissions and conflicts in the Code law.

It is impossible for any Junior Bar Section of any Bar Association to render a real service to the people of the State or to the profession unless we transact business. It is necessary when we do so, that we take some time. Therefore, I ask you to be patient in considering the numerous items to be considered in connection with this report, and may I respectfully urge every man present not to carry on a conversation with his neighbor about the report of the committee or about other matters of interest. While you may not be interested, it is possible that those near you might be interested and you would interfere with those near you, and would also retard the business which we are about to take up.

Although this is a long report and it will be very beneficial to the Bar, it will be necessary that you be quiet so that we can all hear the report and the discussion.

This report will be presented by Mr. Ed Brunini, Chairman of this Committee. May I say they have done some splendid work and put out a most interesting report at this time.

MR. ED BRUNINI:

Dont be alarmed at the size of this. I think everyone has at his place a copy of the report, and I am not going to read each section of the report, but feel that we can take them up one by one, and I can possibly explain the matter to you, and you can pass on it without unnecessary discussion.

The first one is number one, is to the effect that the Supreme Court be requested to revise its rules, so as to provide that the appellee's brief will be in the hands of the appellant at least three days prior to the argument before the Supreme Court. This is so that the appellant may have opportunity to study the brief and see what points will be raised before the Court.

MR. W. W. DENT: Can we vote on these one at a time?

THE CHAIR: I believe that is to be the procedure.

Is there any discussion of Item No. 1 of this report of the Committee.

MR. GORDON ROACH: Move that the item be adopted.

VOICE: Second the motion.

THE CHAIR: If there is no discussion on this item No. 1, all in favor of the adoption of this item, let it be known by saying "Aye", opposed "No". The "Ayes" have it, it is carried. The object of this number is to provide time for appellee's counsel to study

appellant's reply brief before the arguments. It was necessary, in order to do this, that the due dates for each brief be pushed forward.

MR. BRUNINI: Item No. 2, in 1932 the Legislature passed a non-resident motor vehicle act. In the cases where there is a resident defendant also joined in the action, then the choice is put in the plaintiff's hands to sue either in the county where the accident occurred or in the county of the resident. Now, there has been some exception taken to that venue statute to the extent that it has been suggested that the following should be added to it: "the resident defendant shall have the right to remove the action where he is joined with a non-resident to the county of his residence." The directors of the Junior Bar feel that that should be added. Personally, and speaking for the Committee, we feel that that should not be added but that is a question which should be passed on by you gentlemen on the floor. The reason it should not be, is through your general service on non-residents, and you get that by reason of the fact he uses the highway of the State, and by the further fact that the accident occurred, and other states fix the venue; and between two citizens, between two citizens suit is brought in the residence of one, the other resident has no right to remove it to his particular domicile. That is a point that will have to be passed on by the floor.

THE CHAIR: You have heard the explanation of Item No. 2 by the Committee, in their report.

MR. DENT: Move we adopt this report, and I want to congratulate Mr. Brunini upon such a splendid report.

THE CHAIR: What do you say as to the amendment to Item No. 2?

MR. BRUNINI: Let me read it as you have got it on your paper; page two, top of page 2. It has been suggested that this should be added to it:

"the resident defendant may, upon proper motion, remove said suit to the county of his residence", upon proper motion. That is what has been suggested by the Directors of the Junior Bar but that is not the suggestion of the Committee."

MR. SEMMES LUCKETT: What is the Committee's opinion on that?

MR. BRUNINI: That it be not added.

MR. LUCKETT: What is the idea of adding it?

MR. SISSON: It should be changed that the resident defendant could remove to his county.

THE CHAIR: He has an accident, he could be sued in Harrison county, and it is to be added to enable the defendant to sue in the county of his residence, and I think the defendant should

have the privilege of having his suit removed to the county in which he lives. If he is not joined, then you could sue him where the accident occurred, in the county he lives and it would not be necessary to come one hundred miles away from home.

MR. GORDON ROACH: This has to do with constructive process. I think the idea of passing that statute follows Massachusetts and the purpose of passing it was to have non-resident persons or corporations amenable to process in the State of Mississippi, and while it is true the resident defendant under our statute should be sued in the county of his residence, then I take it that the main purpose for passing this statute was to make the non-resident amenable to process in the State of Mississippi, and for that reason I do not think that we should add the amendment to it, and I am with the Committee on that.

THE CHAIR: Any further discussion of Item 2?

VOICE: Are you voting on Item No. 2 as proposed, or with the amendment?

THE CHAIR: When the vote is taken it will be upon the amendment, and then upon the item without amendment.

MR. LUCKETT: As I understand from the explanation as the amendment now stands, that is the regular law. In other words, I dont mean under the statutes but as to process and venue and jurisdiction. That is the regular law and the Committee is opposed to changing the law as it now stands.

VOICE: Mr. Luckett takes the position: let the law stand as it is now. In other words, if you have a non-resident and resident defendant, has a resident defendant got a right to change the venue?

THE CHAIR: Here is the situation with this proposed amendment, Item 2 of this report added the present automobile process statute, the amendment fixes the venue where the accident occurs and that is not the present statute—the proposed amendment is that. So, if the committee's report is adopted without the amendment there will be a change.

If there is no further discussion the question is before the House; whether or not the amendment should be added to this Item No. 2.

VOICE: What on earth is the amendment? I don't understand at all.

MR. BRUNINI: I'll read the amendment.

THE CHAIR: The question is upon the last words, whether they shall be added. All in favor of the amendment being added to Item 2, please say "Aye", opposed "No". The Ayes have it, the amendment is passed.

VOICE: Count the votes—I dont believe the Ayes got it.

THE CHAIR: Those in favor of the adoption of the amendment which has been read stand.

The vote being counted, there were eight in favor of the amendment and twelve against.

The amendment is lost.

The question now is upon the adoption of No. 2 of the Committee: Those in favor of the adoption of Item No. 2 as reported by the Committee, make it known by saying "Aye", opposed "No".

The item is adopted as written by the Committee in their report.

MR. BRUNINI: Item No. 3. Section 5169 of the Code has been held to be unconstitutional and there is no longer any reason for carrying it in the Code. Therefore, we move the adoption of Item 3 of the Committee's report.

MR. ROACH: Second the motion.

THE CHAIR: You have heard the motion and second that Item No. 3 of the Committee's report be adopted. All in favor of the adoption make it known by saying "Aye", opposed "No". The "Ayes" have it and the item is adopted.

MR. BRUNINI: Item No. Four deals with motions for security for costs.

MR. JIMMY EATON: Is it not a fact that the defendant would not be entitled to such a motion until after the return day. It seems that this goes a little far to say it shall be filed on return.

MR. SHANDS: The committee has given these matters thought and are in position to know what is better than we are. I think the law as it stands would be better than this proposed amendment. I don't think that our clients ought to be in the least bit penalized. With deference, I disagree with the committee, although they generally know better about these things.

THE CHAIR: Any further discussion? Those in favor of the adoption of Item No. 4 make it known by saying "Aye"; opposed "No". The ayes have it.

VOICE: Count the votes:

THE CHAIR: Those in favor of the adoption of item No. 4 please stand; those opposed stand.

The vote is 14 to 13 in favor of the adoption of Item No. 4, and Item No. 4 is adopted.

We are now down to Item 6.

MR. BRUNINI: Disability of minority, section 354 and 355.

THE CHAIR: Those in favor of the adoption of Item No. 6 make it known by saying "Aye"; opposed will say "No". The "Ayes" have it, and you have adopted Item No. 6.

MR. BRUNINI: Item No. 7. If the above two suggestions are made, then House Bill No. 262, Chapter 272 of the Laws of 1938 should be revised to read as stated on the report. The only change in this statute is section 3, which appears on the top of page 4. We move the adoption of the item.

MR. OGDEN: Second the motion.

THE CHAIR: All in favor of the adoption of Item No. 7 of the Committee Report, make it known by saying "Aye"; opposed, "No". The "Ayes" have it, and you have adopted Item 7 of the Committee's report.

MR. BRUNINI: Item No. 8.

MR. DENT: What objection would the surety ever have to the reducing of the bond?

THE CHAIR: Any opposition to the adoption of Item 8 of the report of the Committee? If no further discussion, those in favor of the adoption will make it known by saying "Aye", opposed "No", the Ayes have it, and you have adopted Item 8 of the Committee's report.

MR. BRUNINI: Item 9, this was passed by the Committee and Directors.

MR. WEBB MIZE: I think it should be amended to say "Center line".

MR. BRUNINI: The State Highway Department survey was that it would be dangerous to pass over the brow of the hill, and decided to place a yellow line where cars could not pass.

VOICE: There is not going to be an automobile standing by those hills and see if people observe that.

MR. GORDON ROACH: This particular thing I think is good. I know of a hill where more serious accidents happen. I take it that this amendment here is to be recommended for the purpose of putting the motorist, especially non-resident motorist, on notice that he is approaching a dangerous hill, and when the highway department painted a yellow line there, he would know that he was approaching a dangerous point and would not attempt to pass automobiles on that point. I take it that that is the purpose of this recommendation.

MR. BRUNINI: That's right.

MR. EATON: I would like to make this suggestion—I do know that double curves use a double line, and there would be a single line where there is a hill or curve and double line where there is a double curve.

MR. BRUNINI: We put yellow because that is the way the State Highway is marking these points.

MR. EATON: I am not making a point about the color, I am just talking about the double line.

VOICE: Vote.

THE CHAIR: If no further discussion, those in favor of the adoption of Item No. 9 of the Committee's report, will please say "Aye", opposed, "No". Item 9 is adopted, the ayes have it.

MR. BRUNINI: Item No. 10, 11 and 12 were likewise taken up, and adopted by vote of the body.

MR. BRUNINI: If you will all turn to the Supplemental Report of the Committee.

The first paragraph, if no office is maintained in the county, then it must appoint a resident agent for the service of process; and if you turn to the second paragraph—foreign corporations—if it does not so appoint a resident agent, then it is denied the use of our courts.

THE CHAIR: Are there any questions, any discussion, if not we will vote upon the motion of the committee for the adoption of those two paragraphs of the supplemental report. Those in favor of their adoption will make it known by saying "Aye", opposed "No". It is unanimously carried, and those two sections are adopted.

MR. GEORGE EVERETT: Why not clarify that in so many words; why not say: "if they don't appoint an agent, then they cannot bring a suit". Make it read, that any foreign corporation failing to designate a resident agent for service of process shall not maintain any action.

MR. JESSE STENNIS: Would it be open for a little further amendment?

THE CHAIR: I am sure it would, as soon as he gets this one down.

MR. STENNIS: I move that you add something like this: In case the resident agent is not found in the county of his residence or his usual place of abode for the service of process, that the secretary of state can be served with process and be binding upon the company.

THE CHAIR: The question is upon the first amendment.

VOICE: Move its adoption.

MR. STENNIS: I'd like to explain my reason. You have a law where a resident agent appointed, then leaves the state and is gone thirty days and he cannot be served with process. I think thirty days too long where a resident agent is gone—10 days, you should

have a right to serve that process upon the secretary of state and get in court that way—it might keep you out of court for a long time that way.

Both amendments were put and carried.

Thereupon the recommendation of the committee was put and carried.

THE CHAIR:

May I, on behalf of the Junior Bar Section, congratulate this Committee and Chairman upon the splendid work it has done, and I know by your vote that you feel that this is very constructive work, and work beneficial to the profession.

We are delighted to have with us this evening a man we are anxious to hear on a matter we are interested in. We are all interested in the restatements of the American Law Institute, and Judge Sydney Smith is with us, and we would like to hear from Judge Smith with reference to this matter. (Applause)

JUDGE SYDNEY SMITH:

I thank you for this opportunity. I am reminded that about two weeks ago, less than that, in an unguarded moment, I agreed to address or speak to the Boys' State meeting we had in Jackson. Quite a number had preceded me at various time, they were there about a week, about 340 boys. They listened very attentively. I thought I had made a splendid impression and one of the boys said: "I like your speech better than any we've listened to, because it was short".

I want to bring you the blessing of the Court. I tell you, all six of the Judges are very much interested in the work of the Junior Bar Section, because you are doing some constructive work. I have listened to you with a great deal of interest today, and your program, if put in operation, will be constructive.

I do not know anything about the Federal Rules myself; whether they are good or bad. I listened to your committee reports carefully, and if they are adopted, the welfare of the State will be promoted.

I have been very much pleased to look into the faces of this younger crowd. I am astonished when I listen to them, and when I heard young men this afternoon give their views on these various question, my mind went back to the time I was first admitted to the Bar. I listened to Ed Brunini and George Ethridge and the others discussing these matters, we were not as well equipped, the ones of my generation; the bar of my generation learned its law by trial and error at the cost of their clients, after

they came to the Bar, and it is very gratifying to us to know that when we pass off the scene that our places will be taken by gentlemen of your type who are so well equipped for carrying on the work.

As I look in Tom Kimbrough's face, I must believe that a great deal of that is attributable to him and his associates at the University of Mississippi, because a man studying law there now, there is no reason why he should not be well equipped when he enters the practice of that profession. I congratulate you, and I tell you again, that so far as the members of the Court are concerned, and I suspect the Bar generally, they are very much, pleased that our places are going to be taken by gentlemen of your type.

I'll say just something briefly about the Restatement of the Common Law. You know what it is. I am sure that it is the most constructive piece of work that the American Bar has ever undertaken. It is the most constructive piece of work that any English speaking Bar has ever undertaken, and no other work of that type is comparable to it unless it is the work of the English Bar in the latter part of or after the last century when they simplified their procedure in their courts. I have been very anxious that the Junior Bar should be interested in this work because you are the ones that are going to get the most benefit. That Institution is near the close of its work. It will have one more annual meeting, and probably two; after that I cannot say. There is some other work it would like to do, provided its sponsors will put up the money. The Carnegie Institute has been putting up the money so far. When the present work is concluded, I cannot say what will be done further. I have been very anxious for some of you gentlemen to go, so that you will understand how that work is done, and what its value is. I tried to get a number of you to go. I started out to get a crowd. I started out with John Satterfield, George Ethridge, Walker Broach and several others, and they all began to give excuses. I was gratified that they were so busy that they could not leave their office. But Ed Brunini finally took pity upon me and finally went with me, and he will tell you that he was well repaid for the time and money he spent; and I hope some of you, I would like to see all of you, in that meeting next May. It may be the last one.

They have re-stated Contracts, Agency, Conflict of Laws, about completed Torts; will complete Property next year. It will, also, before it concludes, prepare a model code of Evidence, it was found impossible to restate the law of evidence.

That is the work they have done. The way it is done, is that a reporter is selected, sometimes two for each subject; he is always a college professor, no member of the Bar could do that work. I know what I am talking about. He prepares the first draft.

Some of you seem to be a little dubious of the advisability of work done by college professors, but when that draft is prepared it is submitted to his advisors, and those advisors are judges and

members of the bar, and sometimes law professors. After that report has been discussed by the advisory committee, and it is faithfully done, the meeting lasting several weeks at a time. After each meeting the report is redrafted in the light of that discussion; then it is submitted to the Council of the Institute, Senator Pepper is President of the Institute and of the Council. There is not a greater lawyer in America or anywhere else than George Wharton Pepper, and the other members of the Council, leaving out your humble servant, are about the same type. They pass on the work. It is done carefully. When the corrections which have been ordered by the Council, are made, it is submitted to the Institute itself, which meets once a year in Washington, always in the early part of May, and it is compulsory to attend. Several hundred are elected for life, who are members without payment of dues, provided they do not miss three consecutive sessions. If they do, they are automatically dropped, unless good excuse is given, and they do not take just any excuse. And those are the members of the Bar, presiding judges of every state, courts of appeal—there are about six hundred in attendance, and at those meetings they carefully consider every section of the report and it is surprising how many of those members show an accurate knowledge of the subject and suggest changes, and after that meeting has considered the draft it is returned to council and council then consider the recommendations of the general meeting. If the council approve the recommendations, then the draft goes out as changed by the general meeting, but no final draft is ever published until it has been approved by both the general meeting and council. The Council has more time than the general meeting.

That is the care with which it is prepared.

Now, what is the Restatement? It is the Restatement of Common law, not of Mississippi, Arkansas, Louisiana and other states, that you would suppose it to be, it is a combination of all. It would surprise you what the necessity for that is—that our common law had about gotten beyond us, to where it had to be condensed, because of the number of appellate courts dealing with it, the vast number of reports accumulating every year, which made it utterly impossible for any human living to become thoroughly familiar with what the common law is, and if your own state had not decided the exact question in briefing your case it was absolutely necessary for you to examine all of the authorities—it would be impossible to examine them all—but as many as you could find—and with the exception of Corpus Juris and Ruling Case Law—you could not do it otherwise, and that was the situation. So they are working on what the common law is today, not tomorrow, nor yesterday, but today, and it would surprise you how near in accord the decisions of the various states are on what the common law is. It surprised me when I got into it. Of course, there are numerous conflicts, of course, more than one rule, three or four courts dealing with a particular matter or rule of law. Now the Institute had

to deal with just that sort of situation; when that situation confronted you you had to select from those conflicting decisions the proper rule. And the Institute has done just that for you, where the decisions are in conflict, they consider them all, and adopt that rule which in the judgment of those gentlemen, is the best, after having considered all of the conflicts. Now, it has not gone beyond the decisions. Don't get mixed on that. No section that you read in those reports, none of them, go beyond the authorities today except to this extent, that where there is no decision on the exact matter or question necessary implications from other decisions are relied on for what the law is. They have gone that far but no further. You can absolutely rely on it, when your own Supreme Court has not spoken, that it gives you the correct rule of the common law as a number of the courts, lawyers and judges in America understand it; and you see the work is done for you.

Now, when you gentlemen reach Tom Kimbrough's age and mine, I think that the American Law Institute's work, restatement, will be accepted as a starting point—start from that and reason from it. I have been a Judge long enough; I have served with enough Judges, I know that is the work that was needed, and I hope you will get interested in it for your own sake and the sake of your clients and of the Judges in Mississippi. It will relieve you of having an immense library that you are bound to have unless you except Corpus Juris and Ruling Case Law, and you know you cannot do that, and they are the best keys to the cases we have heretofore had.

It was the object of the Institute when it first began its work, that they would follow each restatement with a treatise, commentary, but they found that that was impracticable for two reasons, one was that a group could agree on the law, but were unable to agree on the commentary; and another reason, the lack of funds.

Now then, they decided not to publish a list of cases. If they published the cases, it would be nothing more than a glorified Corpus Juris, nothing more than a key to cases, and you would have used the text, not as a definite statement of the law, but as a means of finding cases, and you would have had to have done the same work that you now have to do. Now, it comes to you without citation of cases, but with the assurance of some of the most famous lawyers of America that it is the statement of the law, and I commend it to you. I hope you will use it; I know it will save you work, and I hope every one of you will go to the next meeting, which will very probably be the last meeting, of that Institute. (Applause)

THE CHAIR: I know that the words you have said with reference to us are undeserved, but it makes us feel good to hear it said, and we appreciate the restatement of the law, and know that it is going to be a wonderful thing when it is completed.

JUDGE SMITH: The first thing I learned was never to over-state the case to the jury; I never have done that, and I did not over-state my case here.

THE CHAIR: We now come to unfinished business. Is there any unfinished business to come before the body that should be disposed of at this time.

MR. SHANDS: In view of the many changes that have been made in the general laws in the state in the last few years, in view of the fact that we are getting ready to annotate the Code, cannot always find them that way, successfully; if the legislature will adopt a new Code, bring it up to date. I've talked to a good many fellows this afternoon and they thought too that we should have a new Code, and I want to bring that up here. I know it would be a saving in time and effort, and with deference, I would like to move that this Section of the Bar do memorialize the Legislature to adopt a new Code, bringing it up to date.

THE CHAIR: You have heard the motion made by Mr. Shands.

MR. STENNIS: Second the motion.

THE CHAIR: Any discussion? If there is no discussion, those in favor of the Motion will say "Aye", opposed "No". The motion is unanimously carried.

Any further new business to be brought up before this meeting?

VOICE: I rise to say that I do not know of anything that would be more beneficial to the profession than the adoption of such tests as Mr. Walker Broach brought before us last year, and as has been so ably discussed before us today, not only for the purpose of detention of crime, but for the reform of the criminal.

VOICE: Second the motion.

THE CHAIR: You have heard the motion and second. Any discussion. If not, those in favor of the motion say "Aye", opposed, "No". The motion is carried.

THE CHAIR: Any further new business to come before the body? If not, I would like to make a very few remarks about the work of this Section.

The work was begun three years ago at Greenville, as a part of the Mississippi State Bar, in order that the young men might be able to do some work that we did not feel was our place before the Mississippi State Bar. We did not go to law school, or pass the Bar Examination or be associated with this profession just by chance; we took those steps that we might have a profession, make a lawyer of ourselves. Our profession has a public interest, it is not simply a means of livelihood, a means of making our daily bread, but it is an order, the legal profession, and will be that which we make of it. I wish to respectfully urge that the interest we have in the Junior Bar Section be continued, and that we take back to the Bar the good that we have learned here. I am interested in the activities of the Junior Bar Section, because it is by this method that

we may become active in the Mississippi State Bar, of which we are a part; that we may be of real assistance not only to our profession, but to the public, and I hope that we will take back to the Mississippi State Bar the good that has been accomplished here, because I believe that it will be of real interest to the Mississippi State Bar.

May I say that as Chairman of the Junior Bar Section of this State I have had very little to do this year; all that I have had to do was to sit back and see the committees work.

May I say, too, that the committees have done a splendid service, and I congratulate them upon their work in their effort to serve the Junior Bar Section and the Bar of Mississippi; they are truly to be congratulated upon the work that they have done. I have enjoyed very much sitting back and watching their activities and the honor of being the Chairman of your Junior Bar Section. (Applause)

THE CHAIR: On behalf of the Junior Bar Section, we wish to thank Mr. Stennis for the entertainment and the hospitality; we always enjoy coming to the Coast and have enjoyed our visit at this time.

We come now to the nomination for Chairman of the Junior Bar Section for the coming year.

MR. GORDON ROACH: I rise to nominate a man very active in the Junior Bar Section since its organization. A man who has done a splendid work; he has had the interest of the Junior Bar at heart. He has done a good job in everything he has undertaken, and I feel that under his leadership in the next, coming year, we will continue to progress—in fact, he has no superior in my opinion, and I think I express the unanimous opinion of this Junior Bar Section.

I recommend to you a young man who not only stands well among the young lawyers, but the old ones as well—I refer to Charles A. Sisson as next Chairman of the Junior Bar Section. (Applause)

MR. EUGENE THOMPSON: At Vicksburg I had the real pleasure of placing Charles name before this Body as Vice-Chairman. I knew before I went down to Vicksburg that I was going to do so, and I spent a great deal of time in preparing a speech that might be acceptable, and you know my surprise when I picked up the record of the proceedings of that meeting, and found that Allen Thompson had been given credit for my eloquence instead of me. What I really want to say is that I am glad to second the nomination of the Hon. Chas. A. Sisson for Chairman of the Junior Bar Section.

MR. DAVE COTTRELL: Move that the nominations be closed.

VOICE: Second the motion. Motion was put and carried.

TOM ROSS: With the amendment that Mr. Sisson cannot make a speech.

THE CHAIR: You have elected Mr. Chas. A. Sisson as your Chairman. You have unanimously elected Mr. Sisson as your Chairman.

I believe that disposes of the matter, it will now be in order for Mr. Sisson to make a speech.

MR. SISSON: I wish to thank you gentlemen for the honor, and if you give me the support you have given John Satterfield, I'll promise to do my best, my best to carry on the work that was started at Greenville, which has gotten better each year.

THE CHAIR: The floor is open for nominations for Vice-Chairman.

MR. NEBLETT: By virtue of the evidence displayed on this floor, of his ability to lead, I place in nomination for Vice-Chairman, Mr. Dugas Shands.

MR. GORDON ROACH: Move that the nominations be closed.

MR. SISSON: Second the motion.

THE CHAIR: You have heard the motion and second that the nominations for Vice-Chairman be closed. All in favor make it known by saying "Aye", opposed, "No". The motion is carried.

You have elected Mr. Dugas Shands as your next Vice-Chairman.

The election of the Executive Committee of the Junior Bar Section is now in order. If you will make your selection and report back to the Chairman, please; three from each district, Northern, Central and Southern.

Whereupon the following were selected by vote of the members present of the districts:

Northern District:

Mr. John Wade,
Mr. Harvey Lee Morrison,
Mr. Hugh Clayton.

Central District:

Mr. Nugent Shands,
Mr. Leonard E. Nelson,
Mr. Coleman Branton.

Southern District:

Mr. Jimmy S. Eaton,
Mr. W. W. Dent,
Mr. Gordon Roach.

ADDRESS OF W. W. DENT BEFORE JUNIOR BAR SECTION

June 21, 1939

Mr. President, Ladies and Gentlemen of the Bar:

For the purpose of clarifying the system of pleading and also for the purpose of bringing about a uniform method of practice and procedure, Congress authorized the Supreme Court of the United States to prescribe by general rule the methods of pleading and practice in the Federal District Courts. Now there is a movement on foot to have the state courts adopt the New Federal Rules and make uniform the practice and procedure in the State and Federal Courts. At first blush uniformity in Federal and State procedure seems plausible, but the more the matter is considered, the more manifest it becomes that State procedure should be left in *statu quo.*

This nation of ours is divided into several states. In each separate state the customs, temperaments, and habits of the people are different, and it is as necessary that each state have its own peculiar mode of procedure as it is necessary that there be a separate state. In other words, the difference between the people of Mississippi and Oregon are the reasons for the differences in the methods of practice and procedure in the various states and are reasons why there should not be uniformity in state and federal procedure.

Also, the New Federal Rules were written and adopted for use in Federal Courts, where the law, the result to be obtained, and the basis of the action are usually entirely different and distinct from the subject matter arising under state jurisprudence. For example, the laws relating to bankruptcy, copyrights, patents, and the Federal Statute on Monopolies and Combines are within the exclusive jurisdiction of the Federal Courts. Under the Laws of our State, which is a "common law" or "code" state, we have different types of actions, such a replevin, divorce, attachment, and other statutory remedies which are governed entirely by Statute, and under such actions many questions arise which are entirely foreign to the federal law, and the Federal rules can be of no benefit to either the court or the practitioner in solving these many questions.

Section 521 of the Code of 1930 abolishes all forms of action and requires that merits only be considered. It further provides that the declaration shall be in ordinary and concise language and contain sufficient matter of substance for the court to proceed upon the merits of the case. The Federal rules require that the complaint contain a "short and plain statement of the claim showing the pleader is entitled to relief", and further, that "all averments in a pleading shall be simple, concise and direct". It will be observed that the words "short", "plain", "simple", "concise" and

"direct" are emphasized in the Federal rule, whereas, our Statute requires the pleadings to be in "ordinary and concise language". No technical form of pleading is required either under the Statute or under the Federal rule, and good pleading under both requires simple, concise and direct pleadings. Good lawyers may differ as to the meaning of the words "ordinary" and "concise" in our Statute and the words "short", "plain", "simple" and "direct" as required by the Federal rules, but I am unable to appreciate any distinguishable difference as all tend to abolish form, simplify pleading and arrive at the issues on the merits. Justice between litigants is the object of the courts, and construing the rule with that end in view, the courts should give all the words a broad interpretation and thereby mete out justice as the circumstances of each peculiar case requires.

The Federal Rule as to Process and Chapter 58 of the Code of 1930 are strikingly similar, as the same result can be obtained by both. Also, under the Federal rules and our Statute amendments are liberally allowed. A critical comparison will demonstrate that fundamentally the Federal rules do not depart from the Code procedure, and that by our adopting the Federal Rule we will be encumbering the record. Minute and trifling distinctions and technicalities are sought to be avoided by the Federal rules, but after observing what fine and hair-splitting distinctions the courts are drawing from the rules and the "loop-holes" left by those decisions, it is apparent that the system of practice and procedure in the Federal Court is more confusing than ever, as the courts are arriving at different conclusions in the interpretation of the same rule. The new rules have served only to perplex and confuse the pleader, and it is apparent that the new rules have not obtained the results hoped for. The reason for this is that they attempt to deal with trifling and technical rules of law which should be left to the judicial discretion of the trial judge. In the June, 1939. issue of the American Bar Association Journal many cases are cited, and under those cases it seems that the law is, more or less, the inclination of the judge rather than a common sense interpretation of the rule. Honest and fair courts not being in harmony as to the meaning of the new Federal rules, of course, the ordinary practitioner is at sea so to speak, and he is guessing in his practice more than he ever did before. It is only fair to the practitioner to say that these rules were written and adopted by the deans and councils and not by those who go into the courtroom having personally prepared their own case.

Under the Federal Rules many startling innovations, which are the dreams and fancies of the legal theorist and which are highly improbable, are introduced into the system of pleading and practice, and the duties and obligations of the ordinary practitioners have been greatly increased. For instance, the practitioner must make a demand for a trial by jury within a certain time or else a trial by jury will be deemed to have been waived. This strikes

at one of the very principles which made our country great, and it is wrong for a judge to have the power to pass on whether or not a client has waived his right to a jury trial.

Lawyers are not infallible, and to deprive a person of such a right because of the default of an attorney is untenable. The purpose of the rule is expediency rather than justice.

Also, under the pre-trial procedure provided for in the Federal rules, a person can be made to disclose the names of his witnesses and the substance of their testimony. Such a practice sanctions "leave and license" to tamper with witnesses, and is one calculated to corrupt the courts.

By our State Constitution chancery and circuit courts are established. The new Federal Rules abolish the distinction between law and equity, and for our state to adopt the new rules a constitutional amendment would be necessary.

The ordinary practitioner who takes pride in this pleading is thoroughly capable of presenting the issues to the court in his pleading without the aid of any more rules or regulations. Mississippi has one of the finest systems of pleading; the system is simple, the courts are just, and laymen understand the simple method of creating issues; the average practitioner has ample rules to guide him, and our procedure is free and unrestrained. Only deans of law schools and law professors criticize our procedure; the public generally is satisfied, except for the howling of critics who have contacted the law only in a library and never in a courtroom, and I conclude with a plea to the deans, law professors, and law writers to let up on the average practitioner and kindly refrain from suggesting any other rules or restraining measures which will hamper and harness him in his efforts to aid the court in rendering "Justice under Law".

REPORT OF ACCOUNTS AND FINANCE MISSISSIPPI STATE BAR

Report upon audit of accounts and financial records for the year ended May 30, 1939, including statement of receipts and disbursements with supporting schedules

DICK D. QUIN
CERTIFIED PUBLIC ACCOUNTANT
Member American Institute of Accountants
JACKSON, MISSISSIPPI

June 12, 1939

Board of Commissioners,
Mississippi State Bar,
Jackson, Mississippi.

Gentlemen:

In accordance with your instructions, I have audited the accounts and financial records of the Mississippi State Bar as maintained in the office of the Secretary-Treasurer for the year ended May 30, 1939. The scope of this audit embraced the verification of all recorded receipts and disbursements during the year, and the verification of the unexpended balance on hand at May 30, 1939.

The results of my audit are presented in this report, which includes: (1) text of comments and explanatory detail; (2) statement of receipts and disbursements for the year ended May 30, 1939; (3) schedules supplementing the foregoing statement.

COMMENTS RESPECTING RECEIPTS AND DISBURSEMENTS

Exhibit A presents statement of receipts and disbursements for the year ended May 30, 1939.

A summary of the receipts and disbursements for the fiscal year 1938-39 and a comparison with a summary of receipts and disbursements for the fiscal year 1937-38 are presented in the following table:

	1938-39	1937-38	Increase Decrease-
BALANCE ON HAND, BEGINNING OF YEAR	$3,141.92	$2,470.81	$ 671.11
RECEIPTS:			
Net dues collected	5,315.00	5,550.00	235.00-
Net collections on returned checks	5.00	15.00	10.00-
Total receipts	$5,320.00	$5,565.00	$ 245.00-
BALANCE FORWARD	$8,461.92	$8,035.81	$ 426.11
DISBURSEMENTS:			
Secretary's salary	1,800.00	1,800.00	
Office expense	734.48	835.45	100.97-
Annual convention expense	387.62	365.69	21.93
Commissioners' expenses	842.16	350.21	491.95
Mississippi Law Journal	2,255.44	1,244.56	1,010.88
Junior Bar Section expenses	244.52	58.50	186.02
Committee expenses	149.50	139.16	10.34
Miscellaneous disbursements	236.61	100.32	136.29
Total disbursements	6,650.33	4,893.89	1,756.44
BALANCE ON HAND, END OF YEAR	$1,811.59	$3,141.92	$1,330.33-

An analysis of the net dues collected during the fiscal year ended May 30, 1939 is presented in schedule A-1. This schedule shows the net amount collected for each fiscal year. All receipts issued by your Secretary-Treasurer were verified by tracing into the depository.

All cancelled checks covering disbursements were carefully examined and were found to be properly supported by vouchers for each expenditure. The balance of $1,811.59 remaining on hand at May 30, 1939 was verified by direct communication with your depository.

A list of all delinquent members at May 30, 1939 is presented in schedule A-2. Returned checks held for redeposit, for which receipts have been issued, are reflected in schedule A-3. While members whose checks have been returned unpaid are delinquent, and are so shown in schedule A-2, it was deemed advisable to include as a part of this report a list of the members issuing these returned checks. Returned check of W. G. Boyett in the amount of $5.00 for 1934-35 dues was written off, as this member died during the year.

A review of the membership roll of the Mississippi State Bar for the current year disclosed the following information:

Active members paying dues	1046
Delinquent members	221
Exempt members	54
New members, exempt for one year	69
Members not in active practice	238
Total members on roll	1628

Entries have been made in the journal and were posted under date of May 30, 1939 to bring the financial records into conformity with the statement of receipts and disbursements forming a part of this report.

Yours very truly,

DICK D. QUIN,

Certified Public Accountant.

MISSISSIPPI STATE BAR

List of Statements Contained in Report on Audit of Accounts and Financial Records, Year Ended May 30, 1939

Exhibit A—Statement of Receipts and Disbursements, Year Ended May 30, 1939.

Schedule A-1—Analysis of Net Dues Collected, Year Ended May 30, 1939.

Schedule A-2—Schedule of Delinquent Members at May 30, 1939.

Schedule A-3—Schedule of Returned Checks Held for Redeposit at May 30, 1939.

Exhibit A

MISSISSIPPI STATE BAR

Statement of Receipts and Disbursements, Year Ended May 30, 1939

BALANCE ON HAND, MAY 31, 1938			$3,141.92
RECEIPTS:			
Net dues collected—schedule A-1		$5,315.00	
Net collection on returned checks		5.00	
Total receipts			5,320.00
			8,461.92
DISBURSEMENTS:			
Secretary's salary		1,800.00	
Office expense:			
Auditing	$ 75.00		
Bond premium	15.00		
Dues and subscriptions	11.60		
Exchange	55.00		
Extra clerical help	39.44		
Postage	243.69		
Stationery, printing, and office supplies	177.16		
Telephone and telegraph	117.59		
		734.48	
Annual convention expense		387.62	
Commissioners' expenses		842.16	
Mississippi Law Journal		2,255.44	
Committee expense:			
Complaint Committee	15.00		
Committee on Rules of Professional Conduct and By-Laws—cost of bulletins	134.50		
		149.50	
Junior Bar Section		244.52	
Miscellaneous disbursements:			
Secretary's expense to A.B.A. convention	147.55		
District Bar Association meetings	12.50		
Typewriter and telephone table purchased	76.56		
		236.61	
Total disbursements			6,650.33
BALANCE ON HAND, MAY 30, 1939			$1,811.59

Schedule A-1

MISSISSIPPI STATE BAR

Analysis of Net Dues Collected, Year Ended May 30, 1939

GROSS RECEIPTS:

	No. of Members	1934-35	1935-36	1936-37	1937-38	1938-39	1939-40	Total
1934-35 dues No. 1106	1	5.00						5.00
1935-36 dues No. 1089-1090	2		10.00					10.00
1936-37 dues No. 1088-1093 1 void	5			25.00				25.00
1937-38 dues No. 1058-1074	17				85.00			85.00
1938-39 dues No. 27-1046	1020					5,100.00		5,100.00
1939-40 dues No. 1-18	18						90.00	90.00
	1063	$ 5.00	$10.00	$25.00	$85.00	$5,100.00	$90.00	$5,315.00

NOTE: The voided receipts were as follows:
1936-37—No. 1092.

Schedule A-2

MISSISSIPPI STATE BAR

Schedule of Delinquent Members at May 30, 1939

Name	Address	No. Yrs. Delq.	Amount
Adam, E. J., Jr.	Pass Christian	1	$ 5.00
Amis, A. B., Jr.	Newton	3	15.00
Anderson, Cephus	Hattiesburg	5	25.00
Arrington, R. O.	Hazlehurst	1	5.00
Austin, B. G.	Jackson	3	15.00
Austin, H. L.	Jackson	2	10.00
Baker, B. H.	Hattiesburg	1	5.00
Bates, Samuel Lyle	Meridian	2	10.00
Bayless, H. L., Jr.	Bay Springs	3	15.00
Bertrand, Ruth L.	Hattiesburg	5	25.00
*Brantley, Z. A	Louisville	1	5.00
*Bridges, L. C.	Purvis	4	20.00
Broadway, L. J.	Meridian	7	35.00
Brown, D. W.	Fulton	3	15.00
Brown, M. D.	DeKalb	3	15.00
Buchanan, Frank J.	Amory	4	20.00
Buchanan, Harry	Hattiesburg	4	20.00
Buckley, J. Emmett	Enterprise	2	10.00
Buckley, John L.	Enterprise	4	20.00
Bullard, Wm. D.	Pascagoula	7	35.00
Burdette, W. F.	Richton	3	15.00
Burnaman, C. Frederic	Jackson	2	10.00
Byrd, J. M.	Leakesville	7	35.00
Byrnes, C. F.	Natchez	4	20.00
*Campbell, J. Edwin	Laurel	3	15.00
Carballo, J. L.	Kosciusko	1	5.00
Carter, B. F.	Laurel	5	25.00

*NOTE: The members so indicated have given checks which have been returned unpaid covering one or more years' dues.

Name	Address	No. Yrs. Delq.	Amount
Case, A. B.	Waynesboro	1	5.00
Churchwell, W. C.	Leakesville	7	35.00
Clark, J. O.	Iuka	1	5.00
Clark, T. A.	Iuka	1	5.00
Collins, F. B.	Laurel	1	5.00
Collins, Jeff	Laurel	7	35.00
Conn, W. D., Jr.	Jackson	2	10.00
Conner, Dudley W.	Hattiesburg	2	10.00
Conner, Claude E.	Columbia	1	5.00
Cooley, D. B.	Laurel	2	10.00
Cooper, R. D.	Meridian	3	15.00
*Cooper, S. B.	Philadelphia	7	35.00
Cooper, J. E.	Purvis	1	5.00
Crisler, Bert	Jackson	4	20.00
Dale, T. Price	Hattiesburg	3	15.00
Davis, D. P.	DeKalb	5	25.00
*Davis, John E.	McComb	6	30.00
Davis, T. B.	Columbia	2	10.00
Davis, Edwin D.	Fayette	1	5.00
Dedeaux, O. J.	Gulfport	5	25.00
*Drake, Carl F.	Durant	2	10.00
Dudley, Colbert	Forest	1	5.00
Duncan, B. A.	Meridian	2	10.00
Dunn, A. C.	Meridian	1	5.00
Dunn, Edwin A.	Meridian	1	5.00
Dunn, Vardaman S.	Jackson	1	5.00
Dunning, F. S.	Canton	2	10.00
Dye, Bradford	Charleston	1	5.00
Easterling, Albert E.	Laurel	5	25.00
Elmer, F. W., Jr.	Biloxi	6	30.00
Estes, Wm. M.	Enterprise	7	35.00
Etheridge, F. K.	Meridian	1	5.00
*Eudy, J. E.	Ackerman	4	20.00
Evans, C. C.	Laurel	6	30.00
Everett, W. M.	Decatur	4	20.00
Fatheree, J. D.	Quitman	1	5.00
Finch, J. D.	Iuka	2	10.00
Finch, Henry L.	Laurel	1	5.00
Fishel, E. C.	Hattiesburg	1	5.00
Franklin, J. E.	Jackson	1	5.00
Fulton, Aubrey D.	Jackson	1	5.00
Gandy, George	Collins	1	5.00
Garraway, J. T.	Purvis	1	5.00
Garth, J. Hunter	Hazlehurst	5	25.00
Gilbert, V. W.	Meridian	1	5.00
Gore, W. E.	Jackson	1	5.00
Goss, B. J.	Columbia	2	10.00
Graham, D. M.	Gulfport	1	5.00
Graham, D. M., Jr.	Gulfport	6	30.00
Greaves, J. M.	Pocahontas	1	5.00
Green, Jess D.	Tupelo	5	25.00
Gwin, Lucian C.	Natchez	1	5.00
Hall, H. G.	Jackson	1	5.00
Hall, Stanton A.	Hattiesburg	1	5.00
Hamilton, George S.	Jackson	3	15.00
Hammond, Kelly J.	Columbia	2	10.00
Hartley, C. D.	Columbus	3	15.00
Harwell, J. M.	Meridian	3	15.00
Harwell, J. D.	Pachuta	1	5.00
*Hathorn, F. C.	Poplarville	1	5.00

*NOTE: The members so indicated have given checks which have been returned unpaid covering one or more years' dues.

Name	Address	No. Yrs. Delq.	Amount
*Hathorn, F. C., Jr.	Hattiesburg	2	10.00
Hatten, W. J.	Sumrall	1	5.00
Haydon, Chas. R.	Gulfport	3	15.00
Hearst, A. A.	Hattiesburg	3	15.00
Heckler, Willie J.	Indianola	1	5.00
Herbert, Lon D.	Oxford	1	5.00
Hewitt, Wm. H.	Jackson	1	5.00
Higgins, John B.	Jackson	1	5.00
Hinds, Robert L.	Tupelo	3	15.00
Hoffman, C. L.	Gulfport	2	10.00
Holmes, D. B., Jr.	Meridian	5	25.00
Holmes, D. W.	Hattiesburg	7	35.00
Holmes, R. M.	Meridian	1	5.00
Howie, J. H.	Jackson	1	5.00
Howie, Joseph	Jackson	1	5.00
Hughes, Phillip D.	Meridian	1	5.00
*Hunter, J. Q., Jr.	Union	7	35.00
Hutto, A. C.	Gulfport	4	20.00
Hutto, W. M.	Waynesboro	5	25.00
Jaap, C. O., Jr.	Jackson	1	5.00
Jack, E. E.	Scooba	1	5.00
Johnson, W. A.	Newton	1	5.00
Katz, Andrew D.	Hattiesburg	2	10.00
Kelly, A. F.	Hattiesburg	3	15.00
Koonce, Pat	Hattiesburg	6	30.00
Lacy, Eugene P.	Booneville	5	25.00
Lewis, E. M.	Hazlehurst	3	15.00
Lewis, Mrs. E. M.	Hazlehurst	3	15.00
Lewis, Clayton	Philadelphia	1	5.00
Lincoln, B. A.	Columbus	3	15.00
Lindsay, English	Gulfport	2	10.00
Locke, Leopold	Poplarville	1	5.00
Long, Sam P.	Tupelo	7	35.00
Maples, Luther W.	Gulfport	5	25.00
Martin, J. D.	Raleigh	1	5.00
McCool, D. C.	Canton	1	5.00
McCully, H. E.	Louisville	1	5.00
McGehee, L. H.	McComb	1	5.00
McGowan, M. M.	Jackson	1	5.00
McLaurin, Carroll J.	Raleigh	1	5.00
McLeod, D. A.	Mt. Olive	2	10.00
McRaney, A. W.	Magee	1	5.00
Melvin, Leonard B.	Laurel	6	30.00
Miller, Hugh Bar	Hazlehurst	1	5.00
Miller, H. L.	Quitman	1	5.00
Miller, M. V. B.	Meridian	1	5.00
Mize, Joseph S.	Forest	1	5.00
Mize, F. F.	Forest	1	5.00
Montgomery, Goode	Laurel	7	35.00
Montgomery, Holt	Laurel	7	35.00
Moore, Wm. T.	Gulfport	2	10.00
Moreland, G. C.	Corinth	3	15.00
Morris, F. M.	Hattiesburg	1	5.00
*Moss, Jos. H.	Raleigh	7	35.00
*Munn, W. I., Jr.	Newton	4	20.00
Nelson, A. M.	Jackson	5	25.00
North, L. G.	Belzoni	1	5.00
O'Neil, A. M.	Dumas	2	10.00
Parker, S. R.	Taylorsville	2	10.00
Peirce, Whitfield	Jackson	4	20.00

*NOTE: The members so indicated have given checks which have been returned unpaid covering one or more years' dues.

Name	Address	No. Yrs. Delq.	Amount
Peyton, F. Lewis	Jackson	2	10.00
Phillips, Casper C.	Meridian	5	25.00
Pittman, Claude F.	Hattiesburg	2	10.00
Pittman, H. P.	Jackson	1	5.00
Pittman, Homer	Hattiesburg	3	15.00
Porter, M. B.	Moselle	2	10.00
Powell, Sid	Canton	2	10.00
Price, J. H.	Indianola	3	15.00
Pullen, Robert L.	Amory	1	5.00
Redmond, S. D.	Jackson	5	25.00
Reeves, R. B.	McComb	1	5.00
Rhine, H. M.	Iuka	7	35.00
Riddell, J. A.	Meridian	1	5.00
Russell, Lee M.	Jackson	2	10.00
Salter, S. G.	Hazlehurst	2	10.00
Saul, L. K.	Ellisville	2	10.00
*Savage, J. S.	Leland	2	10.00
Scarborough, C. P.	Sumrall	7	35.00
Scott, T. W.	Eupora	2	10.00
Seale, J. Eugene, Jr.	Meridian	3	15.00
Sekul, John	Biloxi	1	5.00
Shirley, J. E.	Quitman	1	5.00
Simmons, J. U.	Gulfport	6	30.00
Sims, W. L.	Columbus	7	35.00
Stennett, J. C.	Jackson	3	15.00
Stone, H. R., Jr.	Decatur	4	20.00
Strange, E. T.	Meridian	3	15.00
Stribling, Wm. P.	Columbus	5	25.00
*Stringer, H. C.	Jackson	2	10.00
Sumrall, N. W.	Belzoni	1	5.00
Swalm, Sherman W.	Brookhaven	2	10.00
Swalm, Terry S.	Brookhaven	1	5.00
Swartzfager, Paul	Laurel	2	10.00
Thomas, Rowan T.	Shaw	1	5.00
Todd, E. B.	Jackson	1	5.00
Torrey, V. H., Jr.	Meadville	1	5.00
Travis, J. Madison	Meridian	1	5.00
Turner, S. E.	Carrollton	2	10.00
Upton, Joe	Gloster	1	5.00
Valentine, A. F.	Rosedale	2	10.00
Varnado, Laverne	McComb	1	5.00
Walker, Ray	Laurel	4	20.00
Wall, E. R.	Newton	4	20.00
Ward, E. C.	Biloxi	2	10.00
*Watson, W. Scott	Greenville	1	5.00
Watts, France W.	McComb	1	5.00
Wells, Will S.	Jackson	5	25.00
Whetstone, J. C.	Biloxi	3	15.00
Whitman, Sam	Bay Springs	1	5.00
Wiggington, R. D.	Biloxi	6	30.00
Williams, Frank M.	Moselle	2	10.00
Williams, Marguerite	Picayune	1	5.00
Williamson, T. L.	Purvis	5	25.00
Wilson, Chas. D.	Hazlehurst	5	25.00
Womack, Edw. L.	Brookhaven	1	5.00
Woodruff, Lee T.	Batesville	2	10.00
Yewell, T. O.	Carrollton	3	15.00
Young, H. D.	New Augusta	6	30.00
Total			$2,930.00

*NOTE: The members so indicated have given checks which have been returned unpaid covering one or more years' dues.

Schedule A-3

MISSISSIPPI STATE BAR

Schedule of Returned Checks Held for Redeposit at May 30, 1939

Judicial District	Name	Address	Year Covered	Amount
8	Cooper, S. B.	Philadelphia	1—1932-33	$ 5.00
13	Moss, Jos. H.	Raleigh	1—1932-33	5.00
8	Hunter, J. Q., Jr.	Union	1—1932-33	5.00
14	Davis, John E.	McComb	1—1933-34	5.00
8	Munn, W. I., Jr.	Newton	1—1935-36	5.00
5	Eudy, J. E.	Eupora	1—1935-36	5.00
15	Bridges, L. C.	Purvis	2—1935-36 and 1936-37	10.00
7	Stringer, H. C.	Jackson	1—1936-37	5.00
12	Campbell, J. Edw.	Laurel	1—1937-38	5.00
15	Savage, J. S.	Ackerman	1—1937-38	5.00
4	Drake, Carl F.	Durant	2—1937-38 and 1938-39	10.00
15	Hathorn, F. C.	Poplarville	1—1937-38	5.00
12	Hathorn, F. C., Jr.	Hattiesburg	1—1937-38	5.00
4	Watson, W. Scott	Greenville	1—1938-39	5.00
	Total			$80.00

MISSISSIPPI STATE BAR
DIRECTORY
1939
ACTIVE MEMBERS

Abernethy, H. B., Houston
Abernethy, Thos. G., Okolona
Adam, C. B., Pass Christian
Adam, B. C., Hattiesburg
Adams, Lawrence, Natchez
Adams, J. Cooper, Corinth
Adams, James Hermon, Raymond
Adams, J. J., Jr., Clarksdale
Adams, L. M., Jackson
Adams, M. T., Tupelo
Adams, W. C., Corinth
Alcorn, W. A., Jr., Clarksdale
Alderman, J. E., Leakesville
Aldridge, John Edward, Winona
Alexander, Chalmers W., Jackson
Alexander, H. Chalmers, Jackson
Alexander, James A., Jackson
Alexander, James A., Jr., Jackson
Alexander, Julian P., Jackson
Alexander, W. B., Jr., Cleveland
Alford, J. M., Tylertown
Alford, Percy Knapp, Magnolia
Allen, B. B., Indianola
Allen, Emmette P., Silver Creek
Allen, John F., Kosciusko
Allen, Joe Frank, Kosciusko
Allen, John Percy, Kosciusko
Allen, L. P., Jr., Fed. Trace Comm., Washington, D. C.
Allen, Percy W., Indianola
Ames, Chas. F., Box 552, G. P. O., New York.
Amis, A. B., Sr., Meridian
Anderson, D. M., Newton
Anderson, Fred A., Gloster
Anderson, John R., Tupelo
Anderson, R. B., Port Gibson
Anderson, S. V., Greenville
Anderson, W. D., Jackson
Anderson, W. H., Ripley
Andrews, Landon C., Oxford
Antoon, Edward J., Greenwood
Armstrong, John T., Hazlehurst
Arnold, Roy, Jackson
Arrington, J. Drake, Gulfport
Arrington, John H., Monticello
Aultman, Bruce C., Vicksburg
Avery, Ralph B., Jackson
Ayres, S. N., Ripley

Babendreer, Eleanore, Gulfport
Backstrom, J. W., Leakesville
Backstrom, Oscar, Gulfport
Bacon, Wm. A., Durant
Baddly, Hugh M., Water Valley
Bailey, C. B., Marion
Bailey, R. Lee, Corinth
Bailey, T. L., Meridian
Banks, Geo. H., Newton
Bankston, W. L., Tunica
Barbee, J. W., Hernando
Barbour, Jeptha, Jr., Yazoo City
Barbour, J. S., Jackson
Barbour, J. F., Yazoo City
Barbour, Wm. Henry, Yazoo City
Barksdale, Henry, Jackson
Barlow, E. C., Brookhaven
Barnett, Arden, Jackson
Barnett, O. H., Jr., Carthage
Barnett, Ross R., Jackson
Barnett, Tom J., Carthage
Barrett, Pat M., Lexington
Bass, Catherine, Hazlehurst
Bates, Jean M., Starkville
Batson, W. C., Wiggins
Bauer, T. L., Natchez
Bean, George, Okolona
Beard, W. A., Jr., Laurel
Bearden, Wm. Ellis, Jr., Okolona
Beckett, R. Capel, 135 East 11th Place, Chicago, Ill.
Biedenharn, James P., Vicksburg
Belk, Fred M., Holly Springs
Belk, Wm. D., Holly Springs
Bell, A. H., Greenwood
Bell, B. F., Starkville
Bell, James W., Jr., Tunica
Bell, Percy, Greenville
Bennett, R. E., Meadville
Berger, Fred C., Port Gibson
Berman, Joseph E., Lexington
Berry, Loren B., Tupelo
Berry, O. L., Jackson
Berry, S. B., Hattiesburg
Bickerstaff, R. O., Gulfport
Bilbo, Theodore G., Washington, D. C.
Bishop, R. J., Hattiesburg
Black, E. C., Marks
Black, Maurice R., Flora
Blair, W. A., Tupelo
Blalock, James A., Jackson
Blissard, Tom L., Houston
Bloomfield, Horace, Gulfport
Blount, James A., Charleston
Bogen, Edw. J., Greenville
Boggan, J. W. P., Tupelo
Boggs, Wm. R., Jackson
Bolton, C. R., Tupelo

Bonelli, Albert M., Vicksburg
Booth, Richard B., Aberdeen
Bourdeaux, R. M., Meridian
Bowdre, P. H., Hernando
Boydstun, R. W., Louisville
Boykin, Mack L., Vaiden
Boyles, J. B., Batesville
Bozeman, Albert S., Jr., Meridian
Bozeman, A. S., Meridian
Brackstone, Fernand D., Corinth
Braden, William, Jr., Natchez
Bradford, J. W.. Itta Bena
Bradshaw, F. W., Jackson
Brady, T., Jr., Brookhaven
Brady, Thos. Pickens, Brookhaven
Brady, Tullius, Brookhaven
Bramlette, Maxwell, Woodville
Brandon, G. H., Natchez
Brandon, Gerard, Natchez
Brandon, J. M., Natchez
Brannon, Mary Sue, Aberdeen
Branton, Wm. Coleman, Greenville
Bratton, C. A., Oxford
Bratton, Thos. S., Jackson
Breland, J. J., Sumner
Brett, M. D., Jackson
Brewer, Dan C., Clarksdale
Brewer, Earl, Jackson
Brewer, Ed C., Clarksdale
Brewer, Norman C., Greenwood
Bridgforth, Allen, Yazoo City
Britt, George Thomas, Jackson
Britton, E. H., Macon
Broach, Walker, Jr., Meridian
Broadus, A. Q., Purvis
Brocato, V. J., Clarksdale
Brock, Edmond R., 71 Conti St., Mobile, Ala.
Brooks, Rodney, Clarksdale
Broom, Harmon W., Jackson
Broom, S. C., Jackson
Brown, A. L., Rolling Fork
Brown, Berry D., Greenwood
Brown, G. N., Bay Springs
Brown, J. H., Fulton
Brown, James T., Jackson
Brown, Jos. E., Natchez
Brown, L. W., Starkville
Brownstein, Fred X., Rolling Fork
Bruce, Arthar, Greenwood
Brunini, Alexander J., Vicksburg
Brunini, Edmund L., Vicksburg
Brunini, J. B., Vicksburg
Bryan, Harry M., Jackson
Bryant, Rae, Gulfport
Buchanan, Frank J., Jackson
Buchanan, James R., Laurel
Bullock, H. H., Brandon
Buntin, R. R., Gulfport
Burgin, D. A., Columbus
Burkett, John G., Jackson
Burns, James A., (col), Meridian
Burns, Robert, Jr., Jackson
Busby, A. G., Waynesboro
Busby, Arthur G., Waynesboro
Busby, Jeff, Houston
Bush, M. M., Hattiesburg
Butler, George H., Jackson
Butler, James W., Jackson
Butler, John Sharp, Quitman
Butts, A. B., University
Byars, Wilton Vance, Bruce
Byrd, A. M., Meridian
Byrd, J. L., Jackson
Byrd, T. H., Lucedale
Byrd, W. A., Newton

Cain, S. Robert, Canton
Caldwell, Benj. M., Charleston
Caldwell, J. H., Charleston
Caldwell, J. H., Jr., Charleston
Caldwell, Thomas, Cleveland
Caldwell, Thos. Eugene, Kosciusko
Calhoun, Edwin L., Mount Olive
Calhoun, Robert L., Mount Olive
Calhoun, S. K., Tylertown
Callender, Bernard, Columbia
Cameron, Ben F., Meridian
Cameron, Chas. B., Meridian
Campbell, A. C., Tutwiler
Campbell, Geo. H., Yazoo City
Campbell, T. H., Yazoo City
Campbell, T. H., Jr., Yazoo City
Campbell, Virginia Ruth, Yazoo City
Canizaro, Jack, Vicksburg
Canizaro, P. C., Vicksburg
Cannon, L. C., Tunica
Cannon, R. L., Sumner
Caradine, J. E., West Point
Carlisle, Jack B., Jr., Ackerman
Carlton, L. K., New Albany
Carlton, C. Sidney, Oxford
Carmichael, Benj. B., Greenville
Carney, K. A., Clarksdale
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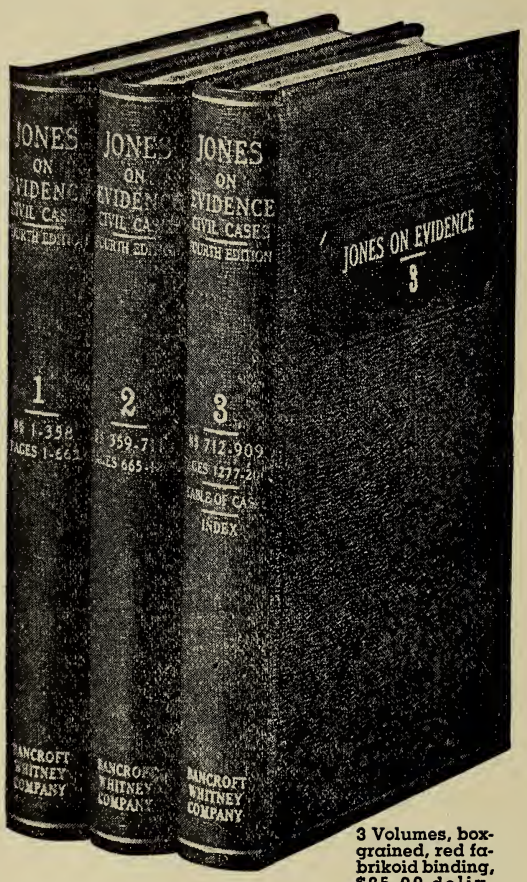

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